

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1134

B P/S

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,  
*Appellee-Plaintiff,*  
v.

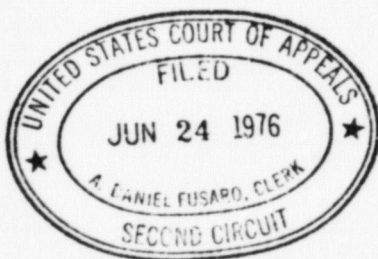
EDWARD CARLTON,  
*Appellant-Defendant.*

**APPELLEE'S APPENDIX**

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BATAVIA TIMES, APPELLATE COURT PRINTERS  
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Direct examination of F.B.I. Agent Davison at Suppression  
Hearing.



Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 REDIRECT EXAMINATION BY MR. WAGNER:

2 Q Agent MacLean, you referred to Special Agent Davison  
3 as being an agent you heard reading certain rights  
4 to the defendants prior to your taking custody of  
5 Miss Smith?

6 A Yes.

7 Q Was that Special Agent Al Davison or Special Agent  
8 Dick Davidson?

9 A Al Davison.

10 Q You are sure about that?

11 A Yes.

12 MR. WAGNER: I have no further questions.

13 THE COURT: All right, Miss MacLean. Thank  
14 you. Next witness, please.

15 MR. WAGNER: The Government calls Al Davison.

16  
17 \* \* \* \* \*

18  
19  
20 A L L A N M. D A V I S O N (111 West Huron Street,  
21 Buffalo, New York), a witness called by and in behalf of the  
22 Government, having been first duly sworn, was examined and  
23 testified as follows:  
24  
25

Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 DIRECT EXAMINATION BY MR. WAGNER:

2 Q Mr. Davison, would you tell the Court, please, by whom  
3 you are employed?

4 A United States Department of Justice, Federal Bureau  
5 of Investigation.

6 Q And how long have you been employed?

7 A Seven years.

8 Q Would you tell us, generally, what kind of work you do  
9 for the FBI, sir?

10 A I am a special agent investigator for the FBI and my  
11 main responsibilities are covering general criminal  
12 matters in Niagara County in New York.

13 Q Mr. Davison, were you working in that capacity February  
14 4, 1975?

15 A Yes, sir, I was.

16 Q Did you have occasion, that day, to become involved  
17 with an investigation of a bank robbery, and specifi-  
18 cally, Mr. Carlton, also known as Mr. Williams, Miss  
19 Smith and Miss Goldsmith?

20 A Yes.

21 Q Would you tell the Court, please, how you first became  
22 involved and what you did, please?

23 A I first became involved as I was in my U. S. Government  
24 vehicle driving in the City of Niagara Falls when, at  
25 approximately 11:00 o'clock in the morning, I received



Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 an alarm over the radio from our Buffalo Office that  
2 a bank robbery had occurred at the Manufacturers and  
3 Traders Trust Company at East Falls and Portage Road  
4 in Niagara Falls, so I immediately responded and went  
5 directly to the bank where I assumed charge of the  
6 FBI phase of the investigation inside the bank.

7 Q Mr. Davison, when you first got to the bank, did you  
8 encounter any of the three defendants in this case?

9 A I was advised by the Niagara Falls Police Department  
10 approximately forty-five minutes after the bank robbery  
11 had occurred that three individuals had been stopped  
12 in a cab and the Niagara Falls Police Department was  
13 bringing them back to the bank and that they would  
14 have them bring them into the parking lot which is  
15 located directly across the street from the bank so  
16 I left the bank and went to the parking lot which, as  
17 I said, was located across the street from the bank  
18 and at that time, I encountered the three individuals.

19 Q Mr. Davison, about what time was that?

20 A It was approximately 11:45 a.m.

21 Q And, Mr. Davison, when you encountered them, did you  
22 have any conversations with them at all, and if so,  
23 will you tell us, please, what you said and what they  
24 said, if anything?

25 A In the bank parking lot I had very limited conversation

Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 other than the fact that Special Agent MacLean  
2 went with me inasmuch as we had been advised that  
3 there were two females among the three individuals  
4 who had been detained by the Niagara Falls Police  
5 Department. I went to the police car in which the  
6 two females were located and I inquired of the officers  
7 whether the two females had been searched and they  
8 told me no, they had not searched them, so one each at  
9 a time I ordered them out of the car respectively and  
10 had SA MacLean search the two individuals. We then  
11 escorted the three of them, Mr. Williams or Carlton  
12 was in another police car and we escorted them into the  
13 bank at that time.

14 Q At that time, sir, did you have any conversations with  
15 any of these defendants?

16 A Yes. Once we were inside the bank, I went to each one  
17 of them. They were all standing together inside the  
18 lobby of the bank and I went to each one of them  
19 individually and I advised them of their constitutional  
20 rights as they are set forth on one of our Interrogation  
21 and Advice of Rights forms, and questioned them as to  
22 whether or not they understood each specific point of  
23 these constitutional rights on an individual basis  
24 and I did not ask them to make any statements, nor  
25 did I take any statements from them at that time.



Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

- 1 Q Mr. Davison, when you say you advised them of their  
2 rights from the Advice of Rights form, do you recall  
3 specifically what you said to them?
- 4 A They are set forth on that Interrogation Advice of  
5 Rights form. I literally read it to them right off  
6 of that form.
- 7 Q Have you ever seen that form before?
- 8 A Oh, yes. I use it in our normal course of business  
9 when I interview a person.
- 10 Q Mr. Davison, I show you what has been marked as  
11 Government Exhibit 3 for identification and I will  
12 ask you if you can generally identify that, sir?
- 13 A Yes. This is an FD-395, which is one of our standard  
14 Interrogation Advice of Rights forms.
- 15 Q Looking at that, sir, will you tell us whether or not  
16 you recognize that as the same form or it contains  
17 the same information which you read to the defendants?
- 18 A Yes. This is identical to the form from which I read  
19 their individual rights to them.
- 20 Q Mr. Davison, when you read that to them, did you read  
21 it to them individually or did you read it to them as  
22 a group.
- 23 A No. I stepped up to each one of them on an individual  
24 basis and I went through the entire form with them.
- 25 Q And at that time, did any of them say anything to you?

Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

- 1 A I took no statement from them. I did not ask them  
2 for a statement. I just asked them if they understood  
3 their rights.  
4 Q And do you recall what they said?  
5 A Yes. They said, "Yes, I understand my rights".  
6 Q Did each one of them say that to you?  
7 A Yes.  
8 Q Did any of them say anything else to you at that time?  
9 A No, not that I can recall.  
10 Q Did you ask them any other questions at that time?  
11 A Just if they understood each point as I went through  
12 the Advice of Rights form.  
13 Q And each time, what did they say?  
14 A They said yes, they understood.  
15 Q Mr. Davison, at that time, you had no further conversa-  
16 tions with them, is that correct?  
17 A That is correct.  
18 Q Did there ever come a time when you had any further  
19 conversation with any of them?  
20 A Yes. After we had finished our business at the bank,  
21 I and Special Agent William Kash transported Mr.  
22 Carlton to the Buffalo office of the Federal Bureau  
23 of Investigation. Upon arrival in our office space,  
24 we put Mr. Carlton in an interview room while I handled  
25 some administrative details and then we fingerprinted



Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 him and photographed him, after which time I again,  
2 using one of these forms, FD-395 Interrogation Advice  
3 of Rights, advised, - orally advised Mr. Carlton of  
4 his constitutional rights, at which time I also, at  
5 the time I was advising him of these rights, gave him  
6 a copy of the same form for him to read along with  
7 me, which he read and he stated that he completely  
8 understood his rights and I asked him if he was  
9 willing to talk to me about his involvement in the  
10 alleged bank robbery that occurred on the same day  
11 and he said to me, "I ain't got nothing to talk about".

12 Q Mr. Davison, I also again show you what has been marked  
13 as Government Exhibit 3 for identification and would  
14 you describe that again for us, sir?

15 A Yes. This form, as it says, is an FD-395 Interrogation  
16 Advice of Rights form which I filled out at the time  
17 that I advised Mr. Carlton of his rights there in the  
18 interview room. Inasmuch as he refused to make a  
19 statement or refused to sign the waiver or rights  
20 portion of this form I immediately noted his exact  
21 words to me and I put, "Edward Carlton quote, I ain't  
22 got nothing to talk about", end quote, and "refused to  
23 sign this waiver or answer questions". I put my  
24 initials after this statement and then I, under the  
25 witness portion of this, signed my official Bureau name,

Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

1 as well as Mr. Kash did also to witness what had just  
2 transpired, and we put the times that this had occurred  
3 on the form

4 Q And Mr. Kash is a Special Agent with the FBI, sir?

5 A Yes, sir, he is.

6 Q Was he with you throughout this encounter with the  
7 defendant at the office?

8 A Yes.

9 Q Mr. Davison, do you know about what time that was that  
10 you had this conversation with Mr. Carlton?

11 A Yes. The times that I showed him, these rights form  
12 is set forth 1:25 p.m. we started the process of  
13 advising him of his rights, going through the form  
14 with him and it terminated at 1:31 p.m. with his  
15 quoted statement that he did not want to talk about it.

16 Q Mr. Davison, I also show you what has been marked as  
17 Government Exhibit 4 for identification and I will  
18 ask you if you can identify that, sir?

19 A Yes. This is an arrest log which I made up on the  
20 same date showing what had transpired as far as my  
21 contact with Mr. Carlton, setting forth times,  
22 approximate times that these things had occurred.

23 Q Mr. Davison, after that, did you have any further  
24 conversations with Mr. Carlton?

25 A Nothing in regards to the bank robbery, no.



Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

- 1 Q Well, in regards to something else?
- 2 A Just general conversations were held of a non-criminal
- 3 nature, because he was there for a couple of hours
- 4 while we were in and out of the room asking if he
- 5 wanted coffee or things like this, or cigarettes,
- 6 just of a general nature. I cannot recall the exact
- 7 content, but nothing regarding the bank robbery since
- 8 he refused to talk about it.
- 9 Q Did you take any routine biographical data from Mr.
- 10 Carlton?
- 11 A Oh, yes. Excuse me. In connection with the interview
- 12 that I had attempted to conduct with him I did advise
- 13 him that I was required to obtain descriptive and
- 14 background information from him which he did provide.
- 15 Q Do you recall, generally, what kind of information
- 16 that would have consisted of, sir?
- 17 A Name, date of birth, height, weight, residence,
- 18 employments, things of this nature.
- 19 Q Did Mr. Carlton give you that information?
- 20 A Yes.
- 21 Q Did you have any difficulty communicating with Mr.
- 22 Carlton in the English language, sir?
- 23 A No, sir, he was very lucid.
- 24 Q Did you have any difficulty communicating with him
- 25 in any sense?

Direct examination of F.B.I. Agent Davison  
at Suppression Hearing

- 1 A None whatsoever other than originally trying to  
2 establish his identity there was some problem with,  
3 which name he was going by at the time.
- 4 Q Other than not knowing exactly what name he was using,  
5 did you have any difficulty communicating with him?
- 6 A No.
- 7 Q Would you describe for us how Mr. Carlton appeared to  
8 you at that time with respect to his outward  
9 physical appearance?
- 10 A Well, I am not a medical doctor, but as I would  
11 view the rest of our contemporary society, he was a  
12 normal, normal as far as his actions and his clarity  
13 of voice and movement. He appeared very normal to  
14 me.
- 15 Q Did you notice anything of any apparent obvious ill-  
16 ness or infirmity of Mr. Carlton at that time, sir?
- 17 A No.
- 18 MR. WAGNER: I have no further questions.  
19 Thank you.  
20
- 21 CROSS EXAMINATION BY MR. ZAKIA:
- 22 Q Mr. Davison, when you encountered the three defendants  
23 inside the bank after you came from the parking lot  
24 inside the bank - -
- 25 A Yes.

Direct examination of Niagara Falls Police Detective  
Richard Clute at Suppression Hearing.



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 R I C H A R D G. C L U T E (520 Hyde Park Blvd., Niagara  
2 Falls, New York), a witness called by and in behalf of the  
3 Government, having been first duly sworn, was examined and  
4 testified as follows:  
5

6 DIRECT EXAMINATION BY MR. WAGNER:

7 Q Mr. Clute, would you tell the Court, please, by whom  
8 you are employed?

9 A Niagara Falls Police Department.

10 Q And how long have you been so employed, sir?

11 A Fifteen years.

12 Q What is your position with the Police Department, sir?

13 A Detective.

14 Q And how long have you been a detective?

15 A Five and a half years.

16 Q Would you tell us, generally, what kind of work you do  
17 as a detective for the Police Department?

18 A I am assigned with the Homicide Squad. When I am not  
19 working on that type of case, I investigate robberies,  
20 burglaries, larcenies and crimes against persons and  
21 property.

22 Q Mr. Clute, did you have occasion to become involved  
23 in the investigation of a bank robbery which had occurred  
24 in Niagara Falls on February 4, 1975?

25 A Yes, sir.



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 Q Would you tell us, please, what your role in that  
2 investigation was?

3 A Yes, sir. I was assigned at the time working with  
4 Lieutenant Zaccarella and approximately 11:00 p.m., -  
5 11:00 a.m. there was a call of a bank robbery at the  
6 bank at Portage and East Falls Street. It is an  
7 M&T Bank. Lieutenant Zaccarella and I remained in  
8 the area and two other detectives went to the scene.  
9 One of the lead officers located a car which was  
10 alleged to have been used in the robbery. We conducted  
11 a brief investigation there and then Officer Gee  
12 apprehended three individuals in another section of  
13 the City we felt were suspect. We conferred with  
14 Special Agent Davison and he recommended that the  
15 suspects be brought back to the bank. They were brought  
16 back to the bank by Officer Gee and other officers and  
17 at this time, Special Agent Davison was handling the  
18 investigation and we were just assisting him. There  
19 came a time when one of the individuals in the bank,  
20 Sandra Soles, was ascertained that she was sixteen  
21 years old and Special Agent Davison requested that the  
22 Niagara Falls Police Department take custody of her.

23 Q Just so the record is clear, is that Special Agent  
24 Al Davison?

25 A Yes, sir.

Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 Q Would you continue, please?

2 A At this time, I advised Sandra Soles that I was a  
3 police officer with the Niagara Falls Police Department  
4 and she had the right to remain silent; that anything  
5 she said could and would be used against her in a  
6 criminal proceeding; that she had the right to have  
7 an attorney present now or at any time during any  
8 questioning and if she could not afford an attorney,  
9 the Court would provide one for her free of cost  
10 or at any time during questioning and I asked her if  
11 she understood her rights and she said that she did  
12 and at this time, she was taken in our police car with  
13 Special Agent Ahart and we transported her to 520  
14 Hyde Park Boulevard, the police station in Niagara Falls,  
15 New York.

16 Q Would you tell us, generally, what you did at that  
17 location, sir?

18 A We had interviewed her and at this time, she admitted  
19 her, - that she had been involved in the robbery of the  
20 M&T Bank and she went into some detail in explaining  
21 how they had started the robbery from a house near there  
22 and she was not sure of the address, but she knew it  
23 was in the same area as the bank and she had told us  
24 about how two days earlier, her and Eddy Smith and this  
25 girl named Deborah had planned to rob the bank, but they



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 did not rob the bank because they had been parked  
2 on the street near the bank and they saw someone from  
3 a tavern watching them and part of her oral statement  
4 when she told us the robbery had originated from the  
5 address somewhere near there we talked to her further  
6 about this and we were able to ascertain that this is,  
7 that part of the plan was to have the girl at that  
8 house who she believed her name was Dot call the police  
9 headquarters and give a phony call so that the police  
10 would be busy elsewhere and we obtained, - and also,  
11 she told us that Eddy Smith, is what she called him,  
12 had taken all of the money and thrown it on the floor  
13 and she thought that he had given this Dorothy or  
14 Dot some money and that he had taken all the clothing  
15 that was used off and he put all the clothing into a  
16 green garbage bag and that she left the room and when  
17 she came back into the room, the garbage bag was gone.  
18 We then, with this information, we requested of her  
19 if she would return with us to the area of the bank  
20 robbery to see if she could point out to us this house.  
21 At which time she returned with us to the area of  
22 14th Street, the 14th Street area and we drove in the  
23 alley taking the same route that she described to us  
24 that they took after the robbery and we parked in the  
25 alley, we parked our car in the alley, and she pointed

Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 out to us a house in this alley which later turned  
2 out to be 320 14th Street and as best I can recall,  
3 Lieutenant Zaccarella and I went into the house along  
4 with Special Agent Ahart and Sandra Soles and as best  
5 I can recall, Sandra Soles stayed on the landing which  
6 is visible to the second floor and I recall knocking  
7 on the door which we were told by Sandra Soles was  
8 the apartment they were at which later we learned to  
9 be the apartment of Dorothy Goldsmith.

10 Q Did you have to go up the stairs to get to that  
11 apartment?

12 A Yes, sir.

13 Q Did you do that?

14 A Yes, sir.

15 Q Okay. Would you continue, please?

16 THE COURT: As long as we are there, can you  
17 describe in greater detail, Mr. Clute,  
18 this is a frame dwelling?

19 THE WITNESS: Yes, sir.

20 THE COURT: The entrance you went in is the  
21 side entrance?

22 THE WITNESS: Yes, sir.

23 THE COURT: And when you went in the side  
24 entrance, there is a, - what do you  
25 see? Are there stairs in front of you?



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 THE WITNESS: Well, you go into the side  
2 entrance. There are stairs going up  
3 to a landing which would be the first  
4 floor. There is an apartment on the  
5 right which is visible and there is an  
6 apartment on the left which is not  
7 visible from this landing.

8 THE COURT: When you say the apartment is  
9 visible, in other words, when you stand  
10 at the doorway and you look up the  
11 stairs, about how many stairs are there  
12 going up to the first landing?

13 THE WITNESS: I would say there are five or  
14 six stairs.

15 THE COURT: And then you could see a door  
16 going in to the right?

17 THE WITNESS: Yes.

18 THE COURT: When you get up to the landing,  
19 as you look to your left, then you could  
20 see another door?

21 THE WITNESS: Yes, sir.

22 THE COURT: And were there stairways going  
23 up further?

24 THE WITNESS: Yes, sir.

25 THE COURT: Is there a door leading up to

Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 this stairway going further, do you  
2 recall, or is that open?

3 THE WITNESS: I believe that is open.

4 THE COURT: When you are there, when you are  
5 in the lower hall, when you first come  
6 in the side entrance from the side of  
7 the building, as I understand, there is  
8 a basement. Does this also give access  
9 to the basement?

10 THE WITNESS: Yes, sir. There is a door to the  
11 left which goes down to the basement.

12 THE COURT: Do you recall whether or not when  
13 you were outside of the building when  
14 you looked at this door, are there any  
15 doorbells or any other indications of  
16 where various people live in the  
17 building?

18 THE WITNESS: As best as I can recall, there were  
19 two mailboxes on the outside of the  
20 building. I don't recall if the name  
21 Dorothy Goldsmith was on one of them  
22 or not.

23 THE COURT: You are up there and you knock  
24 anyway and you learn, or did you learn  
25 that from this Sandra - -



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 THE WITNESS: Yes, sir.  
2 THE COURT: Sandra Soles.  
3 THE WITNESS: Yes, sir.  
4 THE COURT: That the Goldsmith apartment is  
5 the one to your right, is that correct?  
6 THE WITNESS: If I can just correct you on that.  
7 Dorothy Goldsmith's apartment was the  
8 second floor. The first floor apartment  
9 is the one, - there are two floors.  
10 THE COURT: Yes.  
11 THE WITNESS: Dorothy Goldsmith lives on the  
12 second floor. As I recall, we went to  
13 the first landing then we went up six  
14 or seven stairs and there is another  
15 landing and then there is another stair-  
16 way going up.  
17 THE COURT: Did you knock on the door on the  
18 first floor?  
19 THE WITNESS: No, sir.  
20 THE COURT: Why did you go to the second floor?  
21 THE WITNESS: Because Sandra Soles told us that  
22 the second floor apartment in the rear  
23 is where she recalled being.  
24 THE COURT: You went up and you knocked on the  
25 door on the second floor and then what

Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

happened?

THE WITNESS:

No one answered the door.

At this time, I left the apartment with Sandra Soles and I was going into the area of the back yard and Lieutenant Zaccarella got ahold of me and Sandra Soles, - I don't recall exactly how, and informed us that he had found a bag, a garbage bag in the cellar of the dwelling, of the house with a gun and clothing. At this time, I went to the cellar where we looked at the gun and the clothing on the floor very briefly and then returned to the second floor apartment and I conducted an investigation in the apartment building and I was able to ascertain that Dorothy Goldsmith had left the apartment earlier in a cab.

THE COURT:

You say you ascertained that. How did you find that out?

THE WITNESS:

I talked to a woman who lives in the apartment building.

THE COURT:

Where did she live?

THE WITNESS:

She lives on the second floor



Direct examination of Niagara Falls      ce  
Detective Richard Clute at Suppr      on Hearing

apartment, right-hand side, the one  
across from Dorothy Goldsmith.

THE COURT:                      Go ahead, Mr. Wagner.

BY MR. WAGNER:

Q      Mr. Clute, will you tell us what else you learned  
after you learned that Miss Goldsmith had left earlier  
in a cab?

A      At this time, I returned to the police car and requested  
the radio operator to call the cab company to see if  
they could find out where the cab that went from 320  
14th Street, what the destination of the cab was.  
We learned the destination of the cab was a house on  
Pierce Avenue. At this time, I left with other  
FBI Agents to the house on Pierce Avenue and talked  
to a Mr. Smith, I believe, the best I can recall, and  
learned that Dorothy Goldsmith was not at home so  
we left word there if she came in to notify either  
the Niagara Falls Police Department or the FBI. We  
stopped at a Whitney Avenue School which is a school  
for training purposes to see if she was there and she  
was not there. I returned to the police headquarters  
and went into the polygraph room where Lieutenant  
Zaccarella and Special Agent Ahart were just completing  
a typewritten statement from Sandra Soles and I was

Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 present when Lieutenant Zaccarella read the statement  
2 to Sandra Soles and I swore her in as a Commissioner of  
3 Deeds as she signed it.

4 Q Mr. Clute, when you went to the apartment on 14th Street  
5 with Sandra Soles, what was your purpose in going there,  
6 sir?

7 A We were going there, number one, to locate Dorothy  
8 Goldsmith to see if she was, in fact, involved and to  
9 see Dorothy Goldsmith and to see if there was other  
10 evidence in her apartment if we were able to gain  
11 entrance to her apartment, but our main purpose was  
12 looking for Dorothy Goldsmith.

13 Q Mr. Clute, let me show you what has been marked as  
14 Government Exhibit 10 for identification and ask you  
15 if you can identify that, sir?

16 A Yes, sir.

17 Q Would you tell us what that is, please?

18 A This is a photograph which would have been taken by  
19 Detective Truesdale, I believe, from our Identification  
20 Division of Lieutenant Zaccarella and a bag of clothing  
21 and Lieutenant Zaccarella is pointing to a gun.

22 Q Do you know where that was taken?

23 A I was not present when it was taken, but I know it was  
24 taken in the cellar of 320 14th Street.

25 Q Does the picture portray the scene as you recall in the



Direct examination of Niagara Falls Police  
Detective Richard Clute at Suppression Hearing

1 basement that day?

2 A As best as I can recall. I can't exactly testify  
3 that I can remember all of the articles being laid  
4 as they were. I recall seeing the bag and the gun  
5 laying on the floor. I can't recall where the clothing  
6 was.

7 Q Let me show you Government's Exhibit 11 for identifica-  
8 tion and I would like you to identify that, if you can,  
9 sir.

10 A Yes. This also is a photograph which would have been  
11 taken by Detective Truesdale which shows a hub cap,  
12 a beer can, a gun and articles of clothing on the  
13 cellar floor at 320 14th Street.

14 Q Mr. Clute, when you talked to this woman on the second  
15 floor, you said that that was at the door across the  
16 hall from Miss Goldsmith's apartment, is that correct?

17 A Yes, sir.

18 Q Did you ask her anything about going into the basement  
19 at that time?

20 A No, sir.

21 Q Had you already been to the basement when you talked  
22 to her?

23 A Yes, sir.

24 MR. WAGNER: I have no further questions.

25 Thank you.

Direct and cross-examination of August Enman at  
Suppression Hearing.

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 Cook?

2 MR. GREENMAN: Yes, your Honor.

3 THE COURT: Mr. McGuinness?

4 MR. MCGUINNESS: That is fine.

5 THE COURT: 2:30 on Tuesday. Mr. Enman is  
6 here?

7 MR. WAGNER: Yes. He is coming right up.

8 THE COURT: All right.

9  
10 \* \* \* \* \*

11  
12 A U G U S T E N M A N (1203 15th Street, Niagara Falls,  
13 New York), a witness called by and in behalf of the Government,  
14 having been first duly sworn, was examined and testified as  
15 follows:

16  
17 DIRECT EXAMINATION BY MR. WAGNER:

18 Q Mr. Enman, will you tell us where you live, sir?

19 A 1203 15th Street, Niagara Falls, New York.

20 Q And approximately how long have you lived in  
21 Niagara Falls, sir?

22 A In Niagara Falls, all my life.

23 Q Do you own any premises at 320 14th Street in Niagara  
24 Falls?

25 A Yes.



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 Q Could you tell us approximately how long you have  
2 owned that?

3 A Since 1956.

4 Q Will you describe what kind of building it is and  
5 what type of arrangement it is?

6 A Yes. It is a frame building with four family apart-  
7 ments, four apartments with four tenants. It consists  
8 of two floors, an attic and a basement.

9 Q Would you describe how many apartments are on what  
10 floors, sir?

11 A There are two apartments on each floor.

12 Q And there is two floors, right?

13 A Right.

14 Q Are any of those apartments in the basement?

15 A No.

16 Q Are any in the attic?

17 A No.

18 Q Would you describe for us, please, whether or not  
19 what you are telling us now relates to what it was  
20 like in February of 1975?

21 A Describing the apartment?

22 Q In other words, I will ask you to describe it as it  
23 was in February of 1975.

24 A All right. It was four tenants there, two apartments,  
25 one apartment on the first floor in the front and one

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 in the rear. On the second floor, there was one in  
2 the front and one in the rear and a basement that --

3 Q Excuse me one minute. Do you know if there was a  
4 Dorothy Goldsmith living in any of those apartments?

5 A Yes, she was my tenant in Apartment 4.

6 Q And do you know --

7 THE COURT: Is that the upper rear?

8 THE WITNESS: Upper rear, yes, sir.

9  
10 BY MR. WAGNER:

11 Q Do you know how long Miss Goldsmith had been living  
12 at that apartment?

13 A I would say, offhand, approximately a year at the time.

14 Q And did you have occasion at that time to visit the  
15 apartment on any regular basis?

16 A Not regular. I used to check once in a while and  
17 also collect the rents.

18 Q Could you give us an estimate of what frequency you  
19 visited that building?

20 A I would say in February, I probably visited the  
21 building about three times during the month.

22 Q Now, Mr. Enman, would you tell us, please, how access  
23 is gained to these apartments, describing that for us,  
24 please?

25 A The two apartments on the first floor each have a



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 double entrance, front and rear and the apartments  
2 on the second floor have one entrance which is to a  
3 side door and a hallway going up.

4 Q Would you describe what this hallway is like, how you  
5 get in from outside, et cetera?

6 A Yes. There is a common door for all apartments and  
7 you go in, there is, you go up about four steps, there  
8 is a landing to the first two apartments. You make  
9 a one hundred eighty degree turn back and you go up a  
10 double flight of steps to the second floor, to another  
11 landing and two apartment doors.

12 Q Can you get anywhere else when you go in that common  
13 entranceway?

14 A Yes. You can go to the basement by instead of going  
15 up the steps, just turn a little to the left and go  
16 down.

17 Q And how about to the attic?

18 A To the attic is continued from the second floor. There's  
19 a doorway and a hall that goes up to the attic.

20 Q When you are in that hallway, sir, can you get directly  
21 into the apartments or are there other doors between  
22 the hallway and the apartments?

23 A There is doors on each apartment.

24 Q Is there a door between the common hallway and the  
25 basement?



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 A Yes.
- 2 Q Do you know whether or not it is a practice of
- 3 you as the landlord to keep that door open or closed?
- 4 A No, it is not. I have never had it closed.
- 5 Q Mr. Enman, would you tell us, please, a little bit
- 6 about the basement area, what it is like, what it is
- 7 used for, et cetera
- 8 A Yes. The basement is the full size of the house and
- 9 it is divided into, say, a two-third division with a
- 10 wall and a door. In fact, in the back one-third of
- 11 the cellar I have my own storage plus a furnace and
- 12 in the front two-thirds, I have a laundry facility for
- 13 all the tenants and a furnace and hot water tank and
- 14 there is no storage there except for children's
- 15 bicycles.
- 16 Q Could you, - you say the back part is for your own
- 17 storage?
- 18 A Yes, sir.
- 19 Q Is access available to that back part?
- 20 A No, it is padlocked.
- 21 Q How about the front part of the basement area?
- 22 A That is available, yes.
- 23 Q How do you get into that front part?
- 24 A Just going down the steps from the side door.
- 25 Q And about how many steps would that be?

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 A Seven, six or seven.
- 2 Q What is the purpose of the front part of that basement?
- 3 A The front part is for laundry facilities for the
- 4 tenants and my furnace room and also for the electric
- 5 light meters are down there.
- 6 Q Would you tell us, please, whether or not you furnish
- 7 washing facilities for your tenants?
- 8 A Just the double tubs and hot water and drying space.
- 9 Q How many tubs are there, sir?
- 10 A One set of double tubs.
- 11 Q Two tubs total?
- 12 A Right.
- 13 Q And how was the arrangement with the tenants insofar
- 14 as who was entitled to use which tub?
- 15 A Well, both tubs are used by whatever tenant is using
- 16 the laundry facilities and they make the arrangements
- 17 according to themselves. I mean they took turns for
- 18 their special washday and " is usually the longest
- 19 living tenant there would have the choice of which day
- 20 they wanted.
- 21 Q Do you provide washers or dryers for your tenants?
- 22 A No, I don't.
- 23 Q Do you know if, on February 4, 1975, if there were
- 24 any washers and dryers located in the basement?
- 25 A There is one set of automatic washer and dryer set



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 there belongs to the tenant in Apartment 1 and there  
2 was one other washing machine, just a machine.

3 Q Do you know if Miss Goldsmith had a washer or dryer  
4 in that basement?

5 A I don't think she did.

6 Q Do you know if all of the tenants used the washers  
7 and dryers or were they specific washers and dryers  
8 for the individual tenants?

9 A Specifically for the tenant that owned it.

10 Q Was there any facilities there for ironing clothes or  
11 folding clothes, anything of that nature?

12 A No, there wasn't.

13 Q You say you allowed bicycles to be stored in the  
14 basement. Could you explain what you mean by that?

15 A Yes. My tenant on the third floor has two twin boys  
16 ten or eleven years old and they have little bicycles  
17 and they keep them down there.

18 Q Do you allow the tenants to store anything else in the  
19 basement area?

20 A No. They have attic storage space.

21 Q They have a specific storage space in the attic?

22 A Yes.

23 Q Could you describe what that involves, sir?

24 A The attic is a full size attic of the house and it has  
25 walking area full height and it is divided in, - each



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 one has a corner of the attic that they can store  
2 things in and it is a padlocked attic.

3 Q Do you know who has the padlock, who has the key to  
4 the padlock?

5 A I have one key and the tenant in Number 3 has the other.

6 Q And you said that each tenant is assigned a corner.  
7 Are they assigned a specific corner?

8 A Yes.

9 Q Or just any corner?

10 A No, a specific corner.

11 Q Other than the laundry facilities, which belong to a  
12 couple of tenants in the basement in the common area,  
13 and I am not referring to the private part you have,  
14 but the front of the basement, is there anything else  
15 located there?

16 A I have one cupboard I keep paint in, paint cans with  
17 some paint in and I have one refrigerator down there  
18 I store.

19 Q Are those for your own personal use or for the use  
20 of the tenants?

21 A No, it is for my personal use.

22 Q Are the meters that would be read by meter men located  
23 in the basement area?

24 A Yes, they are.

25 Q Did the meter men that come and read the meters have

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 to go in the basement to do so?
- 2 A Yes, sir.
- 3 Q Is the basement area in which the laundry facility
- 4 is located, does that also contain a furnace, did
- 5 you say?
- 6 A There is two furnaces there. One is in that section,
- 7 yes.
- 8 Q Is access to that furnace gained by going through
- 9 that particular area?
- 10 A Yes, sir.
- 11 Q Mr. Enman, who maintains the common hallway area that
- 12 leads to the four apartments?
- 13 A My one tenant on the first floor takes care of that.
- 14 Q Does this tenant do it gratuitously or do you pay her
- 15 for it?
- 16 A No. I pay her for the hall lights and cleaning that
- 17 hall area there every third month.
- 18 Q And do you have a specific arrangement like that to
- 19 maintain the basement area?
- 20 A No.
- 21 Q Mr. Enman, where do you store or where do the tenants
- 22 keep their garbage in that particular building?
- 23 A Well, their daily garbage is kept in their apartments
- 24 and then they put it in back by the alley. I have
- 25 cans out there in the alley.



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 Q Do you allow them to store their garbage in the base-  
2 ment?  
3 A No, I don't.  
4 Q Have you ever had tenants store their garbage in the  
basement?  
6 A I can recall one time when I found some garbage down  
7 there in a corner and I checked around and nobody  
8 admitted it was theirs, but I cleaned it out and they  
9 never put it there again.  
10 Q Mr. Enman, by the way, do the tenants have a lease on  
11 this place?  
12 A No, they don't.  
13 Q Do you explain to them when they move in what their  
14 relationship is as far as rights in the basement?  
15 A I explain as well as I can. It is not a routine of  
16 any sort, no.  
17 Q Would you allow the tenants to store something in the  
18 basement area?  
19 A If it was something that couldn't be put in the attic,  
20 some large thing like, we will say, a refrigerator or  
21 stove or something they couldn't get in the attic,  
22 that they don't want, or if I have one of my own, I  
23 put it in.  
24 Q So, Mr. Enman, other than allowing them to do their  
25 laundry in the basement area if they have a washer and



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 dryer and other than allowing the children in one  
2 of your apartments to keep their bicycles there, is  
3 there any other use that the tenants would have for  
4 that basement?

5 A None other than drying clothes from the laundry; other  
6 than that, I would say no.

7 Q Is the basement area where the laundry facilities are  
8 located, is that in any way divided off and particular  
9 space allotted to any particular tenant, or is it  
10 generally for the use of all the tenants?

11 A Used by all tenants, no divisions.

12 MR. WAGNER: I have no further questions.

13 Thank you.

14 THE COURT: Mr. McGuinness.

15  
16 CROSS-EXAMINATION BY MR. MCGUINNESS:

17 Q May it please the Court; Mr. Enman, am I saying your  
18 name properly, Enman?

19 A Yes, sir.

20 Q You supply the garbage cans, is that correct?

21 A Yes.

22 Q Do you supply any liners for them?

23 A No, I don't.

24 Q Is it possible that you may have, in February of 1975,  
25 supplied garbage liners?

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 A No, I never have.

2 Q The one tenant with the key, you have a long standing  
3 tenant in that building?

4 A I have three. One very long, yes. It is an old  
5 property.

6 Q Is that the tenant with the extra key?

7 A Not for the cellar. It is for the attic, yes.

8 Q Is it possible that the, - some of your long standing  
9 tenants may have used the basement for more personal  
10 storage, perhaps leave things down there for days at  
11 a time?

12 A Not that I recall. I don't think so.

13 Q There were periods of time when you weren't in the  
14 building and you hadn't been there for a period of  
15 time that that could have happened, is that correct?

16 A Oh, yes, it could have happened.

17 Q Now, do you recall how often you visited the building  
18 in February of 1975, say January and February?

19 A January and February, I would say maybe three times  
20 because there is three different dates that I pick up  
21 the rents at that time, from my Tenant Number 4. She  
22 was on Welfare and I got that through the mail. I  
23 didn't collect hers.

24 Q Okay, and that would have been when?

25 A In February.



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 Q Would you have expected that?
- 2 A Let's see, it would be around the 1st of the month.
- 3 Q So, to the best of your recollection, you had no reason
- 4 to go to the building on the 1st of the month of
- 5 February, 1975?
- 6 A No, not that I would know of.
- 7 Q And when would have been the next date thereafter when
- 8 you would have gone to the building?
- 9 A Well, after this incident, this trial was over, that
- 10 day I was called down by one of my tenants down there,
- 11 yes.
- 12 Q On the 4th?
- 13 A I don't know what day it was.
- 14 Q Do you recall what day of the week it was?
- 15 A No, I don't.
- 16 Q You went down and you went to the apartment on the
- 17 day of this incident about which this trial is?
- 18 A Yes.
- 19 Q All right, but you don't recall being there between
- 20 the first and - -
- 21 A I can't recall.
- 22 Q Did you have a lock on the back door?
- 23 A Yes.
- 24 Q What sort of a lock was it?
- 25 A It is a Yale-type lock with each tenant has a key for



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 it and it can be locked from the inside or outside.

2 Q Does it lock when the door is closed?

3 A Yes, it does, unless the lever is down to keep it  
4 unlocked, but it is supposed to be kept locked all  
5 the time.

6 Q When you have occasion to visit the building, if you  
7 are going upstairs, - Strike that. If you are not  
8 going upstairs, do you check the side door at all or  
9 do you just go to the front door?

10 A No, I just go to the side door. That is the only door  
11 I go to.

12 Q The side door?

13 A Yes. That's the only one I have a key for.

14 Q Have you ever had a lock on the basement door?

15 A No, sir.

16 Q Do you recall the state of repair of the side door  
17 from the hall to the outside, to the exterior?

18 A In good shape, yes.

19 Q Did it have glass windows in it?

20 A It had a glass window in the door and it has Plexiglas  
21 in the storm door, yes, brand new storm door.

22 Q And they were in good condition on the 4th of February,  
23 as good as you could tell?

24 A Yes.

25 Q And prior to that?

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

- 1 A Well, until I put that storm door on, I can't recall  
2 the date, but that was broken and I put a new door on  
3 it.
- 4 Q Was that about the same time as this incident?
- 5 A No. I think that was in the fall or earlier in the  
6 winter.
- 7 Q Do you specifically recall instructing Miss Goldsmith  
8 concerning the fact she was not permitted to use  
9 the basement for storage?
- 10 A Specifically?
- 11 Q Yes.
- 12 A No, but I can remember telling Dorothy when she moved  
13 in that she could do her laundry and to check and  
14 find out what day, - I wasn't sure which day would be  
15 for her, and that she was to cooperate with the rest  
16 of the tenants because it is a family type of thing.  
17 They all got along real good and that is what I  
18 expected, but other than that, no, specifically.
- 19 Q And did you ever have occasion to visit the building  
20 when you found people actually using the laundry  
21 facilities?
- 22 A No, I never have.
- 23 Q Did you ever find laundry left down there?
- 24 A No.
- 25 Q Do you have any maintenance supplies for the building



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 stored in that cellar?

2 A The front cellar, no.

3 Q By that you mean if you do have them, they are in  
4 your own private area?

5 A In the back I have some Spic and Span is all.

6 Q Would there be any occasion for you to store plastic  
7 bags or anything like that in your storage area?

8 A In my area?

9 Q Yes.

10 A I doubt it.

11 Q For leaves or something?

12 A No. I remember when I cleaned the yard next to it,  
13 that was the year before. No, we didn't even have  
14 them then because we had to pile it up at that time,  
15 I remember now.

16 MR. MCGUINNESS: Thank you.

17 THE COURT: Anything else, Mr. Zakia?

18  
19 CROSS-EXAMINATION BY MR. ZAKIA:

20 Q Mr. Enman, did you testify there was a door in the  
21 cellar, going down to the cellar?

22 A Yes.

23 Q What is the purpose of the door?

24 A Well, I believe, if I'm not mistaken, I believe it was  
25 a fire door type of thing for multiple residence require-



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1           ments.

2           Q       Did you put it up?

3           A       No, I didn't. It was on when I bought the property.

4           Q       Do you mean it was a metal fire door?

5           A       No, it is a wood door.

6           Q       Then it is not a fire door.

7           A       Just to keep it closed.

8           Q       To keep it closed, okay. Now, you said you never

9           closed the door.

10          A       No.

11          Q       You don't live there, do you?

12          A       No.

13          Q       And you don't know whether or not anybody closes the

14          door for any particular - -

15          A       No.

16          Q       But they could very well.

17          A       They could.

18          Q       All right. Say the fellow next door wanted to go down

19          and use your cellar, would you allow him to do that,

20          anybody on the street?

21          A       No.

22          MR. WAGNER:                   I object, your Honor.

23          BY MR. ZAKIA:

24          Q       So the tenants can expect not everybody in the

25          neighborhood can go down and use your cellar?

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 MR. WAGNER: I object to that also, your  
2 Honor.

3 THE COURT: Overruled. There may be some  
4 exceptions.

5 THE WITNESS: No, nobody is supposed to use that  
6 cellar except my tenants and myself.  
7

8 BY MR. ZAKIA:

9 Q All right, and they can use that cellar?

10 A No, they couldn't get in unless they came in through  
11 the side door.

12 Q Excuse me. I'm sorry. The tenants can use that  
13 cellar?

14 A Oh, yes.

15 Q So the fellow has his bicycles down there expects  
16 no one is coming in or has authority from you to  
17 come in and take that bicycle or use that bicycle or  
18 do anything down there, is that correct?

19 A Restate that, please.

20 Q The fellow who keeps the bicycle down the cellar.

21 A Yes.

22 Q He can well expect that somebody from next door or  
23 down the block is not going to come down in your cellar  
24 and take that bicycle or use it?

25 A That's right.



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 Q They are not allowed down there. If you are not a  
2 tenant, you are not allowed down there?

3 A That's right.

4 Q That goes for police officers without a search  
5 warrant too, doesn't it?

6 MR. WAGNER: I will object to that, your Honor.

7 THE COURT: Mr. Zakia, I think that is a  
8 legal question, so I will sustain the  
9 objection.

10

11 BY MR. ZAKIA:

12 Q On February 4th, did any police officers come up to  
13 you and ask you for permission to go search down that  
14 cellar?

15 A No.

16 Q If one of your tenants wanted to use that cellar to  
17 paint a chair, for instance, and they went down and  
18 did that, would that be allowed?

19 A Yes.

20 Q They can leave that chair down there to dry overnight?

21 A Sure.

22 Q I take it they would be allowed to leave the can of  
23 paint there until they are finished with the job?

24 A Yes.

25 Q You don't have any strict rules on what and what not,



Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 you act reasonably, is that correct, sir?

2 A Right.

3 MR. ZAKI' All right. Thank you.

4  
5 CROSS-EXAMINATION BY MP. GREENMAN:

6 Q Just briefly along that line, Mr. Enman, I take it  
7 then that the reason that you leave the basement open  
8 is for the benefit of the tenants, is that correct?

9 A That's correct.

10 Q And that is part of the, - when they rent the house,  
11 that is part of the option that goes along with it,  
12 is the limited or the use you have explained of the  
13 basement?

14 A Right.

15 Q And it is to their benefit that the front part, at  
16 least, of the basement is kept open, is that correct,  
17 sir?

18 A Yes.

19 Q And in that regard, as Mr. Zakia mentioned to you,  
20 if someone leaves a bag down there temporarily, you  
21 would have no particular objection to it being used  
22 for that purpose, do you?

23 A I doubt it very much.

24 Q And along the lines that Mr. Wagner was asking you,  
25 with regard to the garbage that you found in there,

Direct examination of Niagara Falls Police  
Officer Robert Gee at Suppression Hearing

1 that is from a safety and a health point of view that  
2 you don't want the basement cluttered up for a long  
3 period of time, is that correct, sir?

4 A Yes, but I had also, before that, had complaints of  
5 mice.

6 Q Right.

7 A And one lady was very afraid of mice.

8 Q Right, and I take it you have a pretty good relationship  
9 with most of your tenants then?

10 A Very good, yes.

11 Q Okay, and based upon the time that you rent the apart-  
12 ment, a particular apartment to them, it is more or  
13 less you can use the basement, just don't take advantage  
14 of me?

15 A Keep it clean.

16 Q Okay. Now, with regard to the hallways of your  
17 apartment, those are common hallways going up the stairs  
18 from the first and second floors, is that correct, sir?

19 A Yes, it is.

20 Q Okay, now, other than the hallway, well, let me just  
21 rephrase the question, aside from the hallway, that  
22 basement isn't for the common use of anybody besides  
23 the tenant, the tenants and yourself, is it?

24 A That's correct.

25 MR. GREENMAN:

That's all. I have nothing



Direct examination of Niagara Falls Police Detective  
John Zaccarella at Suppression Hearing.



Direct and cross-examination of August Enman  
at Suppression Hearing

asked not to be present today consistent  
with her application the other day. She  
is attending a funeral.

THE COURT: Miss Smith is still sick?

MR. ZAKIA: Yes, your Honor.

THE COURT: And the same application, all right  
to proceed without her?

MR. ZAKIA: Yes, Judge.

JOHN A. ZACCARELLA (1344 - 99th Street,  
Niagara Falls, New York), a witness called by and in behalf  
of the Government, having been first duly sworn, was examined  
and testified as follows:

DIRECT EXAMINATION BY MR. WAGNER:

Q. Mr. Zaccarella, would you tell us by whom you are  
employed, sir?

A. By the City of Niagara Falls, New York Police Department.

Q. And what is your position with the police department?

A. I am a Detective Lieutenant of the police department.

Q. Approximately how long have you held such a position?

A. As Detective Lieutenant?

Q. That's right.

A. Five years.

Direct and cross-examination of August Enman  
at Suppression Hearing

1 Q. Generally, what kind of work do you do in that capacity?

2 A. I am in charge of the Homicide Squad and also head up  
3 the squad in reference to burglaries, robberies and  
4 any other felony or serious crime.

5 Q. Mr. Zaccarella, did you have occasion to involve yourself  
6 in the investigation of a bank robbery which occurred  
7 in Niagara Falls on February 4, 1975?

8 A. Yes, sir.

9 Q. Would you tell us, please, sir, how you first became  
10 involved with that investigation and what you did?

11 A. It was approximately 11:00 a.m. on Tuesday, February 4th,  
12 a radio call went out, a bank robbery and alarm at the  
13 M & T Bank at Portage and East Falls Street. Car 14  
14 with Detective Pierce and Coney were sent to the bank  
15 along with the beat car. Myself and Detective Clute  
16 were in Car 17 and we stood in the general area looking  
17 for a car. There was a pickup and hold on a Plymouth  
18 car. Shortly after the bank robbery call, Car 47  
19 located this car to the rear of 13th Street school.  
20 This was in the alley between 13th and 14th Street,  
21 Niagara and East Falls Street. We directed the officer  
22 to stand by the car and at the same time it was  
23 approximately 11:25 a.m. Officer Gee requested my  
24 assistance at this time out in the LaSalle area, that  
25 he had stopped a cab and he had some suspects in the cab



Direct and cross-examination of August Enman  
at Suppression Hearing

1 and because of where we were in comparison to where he  
2 had stopped the people I had directed Detective Hiltz  
3 who was in the LaSalle area to go to that scene and  
4 head that operation out there. Myself and Detective  
5 Clute proceeded to the bank where I conferred with  
6 Special Agent Davison of the FBI. We talked over the  
7 suspects, what to do with them and myself by police  
8 radio directed Officer Gee to bring them back to the  
9 bank for a show-up. At approximately 12:00 noon the  
10 three suspects, one black male and two females were  
11 brought back to the bank and the FBI conducted an  
12 investigation and the one girl, Sandra Soles, being  
13 sixteen years old, was turned over to our custody in the  
14 bank and she was advised of her rights by Detective Clute  
15 and she was transported into 520, that is Niagara Falls  
16 Police Station, 520 Hyde Park Boulevard. I was driving  
17 equipment 17 and Detective Clute and Special Agent Ahart  
18 of the FBI accompanied us along with Sandra Soles. She  
19 give us a quick story of what had happened, how the  
20 bank robbery was planned and she also implicated a  
21 fourth suspect.

22 Q. Okay. Would you tell us a little bit about that, sir,  
23 what you did in that respect?

24 A. As far as the fourth suspect she described the street  
25 in the proximity of the bank where she was that we

Direct and cross-examination of August Enman  
at Suppression Hearing

1 surmised would be 14th Street and she described a house,  
2 told us the house, but she did not know the number, and  
3 we asked her if she would escort us to the area and  
4 point out the house and the apartment where this Dot  
5 lived, the girl that she had implicated as the fourth  
6 person involved in the conspiracy of the bank holdup.  
7 This we did and we returned back to the area of  
8 320 - 14th Street at approximately 1:00 o'clock in the  
9 afternoon. Myself, Detective Clute, Special Agent Ahart  
10 and Sandra Soles. We had Special Agent Ahart stand by  
11 the downstairs door and we put Sandra Soles on the  
12 center landing and Detective Clute went to the door,  
13 the rear apartment was the apartment of Dorothy Goldsmith.  
14 He knocked. No one answered and we called out her name  
15 and didn't get an answer. We then proceeded down the  
16 stairs and down the stairs I went into the cellar area  
17 and once I got into the cellar area I looked around and  
18 I seen a plastic garbage bag and readily in view was a  
19 red pair of pants. You could see through the covering  
20 of the garbage bag. At the station earlier Sandra Soles  
21 had told us that she had removed her clothing, she had  
22 brought an extra set of clothing from Buffalo and that  
23 she was wearing a navy pea coat and a pair of red pants.  
24 Once after the robbery when they were at Dorothy  
25 Goldsmith's apartment, she stated she changed her



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1 clothes and gave them to Eddie and in turn he placed  
2 them in a garbage bag and she left the room and when  
3 she came back, the garbage bag was gone. She didn't  
4 know where the bag was. As I went into the cellar  
5 looking for Dorothy Goldsmith, I seen a garbage bag  
6 with what looked like a pair of red slacks through it.

7 Q. Mr. Zaccarella, I wonder if you could describe what the  
8 doorway was like that you went into into the basement  
9 and also if you could describe what the basement looked  
10 like at that time.

11 A. There is a door to the basement at the top of the stair-  
12 way. There is approximately, I would be guessing,  
13 seven to ten steps that lead straight down into the  
14 basement and there is what supposedly is a fire door  
15 that was propped open up against the wall, the back wall  
16 of the hallway. This door was propped open with a  
17 wedge under it and you go straight down the steps and  
18 as you get to the bottom of the step on the right side  
19 approximately eighteen inches to twenty-four inch recess  
20 is a small partition area where the garbage bag was.  
21 Straight ahead and to your right was where the furnace  
22 was. All the way straight in is a laundry tub.

23 Q. Mr. Zaccarella, I show you Government's Exhibit 10 for  
24 identification and ask you if you could describe what  
25 that is, sir, if you know.

Direct and cross-examination of August Enman  
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1 A. Yes. This is the bottom of the stairway I have just  
2 described with the eighteen to twenty-four inch recess  
3 where the garbage bag was sitting.

4 Q. And do you see anything else in that picture you  
5 recognize, sir?

6 A. Yes. I see the clothing and also the weapon that we  
7 confiscated in that basement.

8 Q. And there is an individual in that picture, is that  
9 right?

10 A. Yes, sir. That is myself.

11 Q. And do you know when that picture was taken?

12 A. That picture was taken, I would say, approximately ten,  
13 fifteen minutes after I found this garbage bag.

14 Q. I show you what has been marked as Government Exhibit 11  
15 for identification and I would like you to describe that  
16 also, sir, if you know what it is.

17 A. Yes. This is the same shot of the same clothing and  
18 the handgun, only it is a closeup. The camera was  
19 closer up to the area of the bag and the gun itself.

20 Q. Mr. Zaccarella, would you tell us, please, what the  
21 basement looked like as far as lighting and walls and  
22 floors and that type of thing?

23 A. I am not positive. There was no lights on when I went  
24 down there and the walls are constructed of a concrete  
25 substance, not stone, and the cellar was relatively



Direct and cross-examination of August Enman  
at Suppression Hearing

1 clean.

2 Q. Was there lighting in the basement after you got down  
3 there?

4 A. I asked somebody to get a light bulb. Right at the  
5 bottom of the steps there was a socket but no light in  
6 it and someone went up to one of the apartments and  
7 came down with a bulb. I don't know who it was who  
8 came down, but they came down with a bulb and we put  
9 it in there and put it on.

10 Q. Was the basement finished off like the inside of a  
11 house or was it a typical basement?

12 A. A typical basement.

13 Q. Mr. Zaccarella, after you opened the bag, would you tell  
14 us what you did when you first saw the bag?

15 A. When I seen the bag and when I seen what looked like a  
16 pair of red slacks in the bag, I just grabbed the  
17 bottom. The bag was laying on its side. I ripped it  
18 open. The red slacks fell out and the gun fell out.  
19 I reached in and I pulled out a leather coat and a  
20 pea coat that was in the same area and I just left it  
21 in that condition and called for an identification man,  
22 and also Sandra Soles.

23 Q. Now, was this the typical plastic garbage bag that you  
24 found there?

25 A. Yes, sir.

Direct and cross-examination of August Enman  
at Suppression Hearing

- 1 Q. Was there anything else in the bag that you recall?
- 2 A. There was garbage in the bag, yes, sir.
- 3 Q. What do you mean by garbage?
- 4 A. Food cans, wet paper, typical garbage.
- 5 Q. After you called for identification, sir, what if any-
- 6 thing happened next?
- 7 A. I yelled up to Mr. Ahart to have Detective Clute bring
- 8 Sandra Soles down into the basement and I had her stand
- 9 at the bottom of the steps and asked her if she seen
- 10 anything she could recognize and she said, "Yes, them
- 11 are my pants, that's the coat I was wearing and that's
- 12 the gun that Eddie had."
- 13 Q. What did you do next, sir, if anything?
- 14 A. I had Detective Truesdale take pictures of the clothing
- 15 and the gun and directed him to keep custody of the
- 16 same and bring it in to 520 and hold it as evidence
- 17 and have our firing range officer fire the weapon.
- 18 Q. Mr. Zaccarella, when you went into the basement, did
- 19 you have a warrant with you at the time?
- 20 A. No, sir.
- 21 Q. Do you know if you, sir, or anyone that you know of
- 22 obtain permission from any of the tenants at the building
- 23 to enter the basement?
- 24 A. To my knowledge, no, sir.
- 25 Q. When you went there, was the outside door locked?



Direct and cross-examination of August Enman  
at Suppression Hearing

1 A. No, sir.

2 Q. It was open?

3 A. Yes, sir.

4 Q. Was the door from the entranceway into the basement  
5 locked?

6 A. No, sir.

7 Q. Was it open or closed?

8 A. It was open.

9 Q. When you went down to the bottom of the stairs, about  
10 how far was the bag from the bottom of the stairs, sir?

11 A. A matter of inches.

12

13 MR. WAGNER: I have no further questions. Thank  
14 you.

15

16 CROSS EXAMINATION BY MR. GREENMAN:

17 Q. Officer Zaccarella, you testified that you went back  
18 down to the basement. Who went down to the basement  
19 with you initially?

20 A. Myself. I went alone.

21 Q. Okay, and this was after someone had put a light bulb  
22 in that you went downstairs?

23 A. No, sir.

24 Q. Okay. What was the lighting condition when you first  
25 entered the basement?

Direct examination of Niagara Falls Police Officer  
Robert Gee at Suppression Hearing.



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 R O B E R T F. G E E (520 Hyde Park Boulevard, Niagara  
2 Falls, New York), a witness called by and in behalf of the  
3 Government, having been first duly sworn, was examined and  
4 testified as follows:

5  
6 DIRECT EXAMINATION BY MR. WAGNER:

7 Q. Mr. Gee, would you tell us by whom you are employed,  
8 sir?

9 A. City of Niagara Falls Department of Police.

10 Q. And what kind of position do you have with the police  
11 department of Niagara Falls, sir?

12 A. I am a patrolman assigned to "A" Platoon.

13 Q. Approximately how long have you been a patrolman with  
14 the Niagara Falls Police Department?

15 A. Five years.

16 Q. Would you tell us generally what kind of work you do as  
17 a patrolman?

18 A. I am assigned to patrol division, "A" Platoon, Car 43,  
19 Post Number 8. I deal with vehicle and traffic work,  
20 all patrol duties, traffic functions.

21 Q. Mr. Gee, were you working in that capacity on February 4,  
22 1975?

23 A. Yes, I was.

24 Q. What were you doing that day, sir, what kind of work?

25 A. Same thing, patrol.

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 Q. Were you assigned to a car that day?

2 A. Car 43.

3 Q. Mr. Gee, did you have occasion that day to get an  
4 alarm about a bank robbery occurring at the M&T Bank  
5 in Niagara Falls?

6 A. Yes, I did.

7 Q. Would you tell us, please, sir, what time that was and  
8 what you heard on the radio?

9 A. It was approximately 10:55 hours and the police radio  
10 dispatched Car 41 and any car in the area to the M&T  
11 Bank, Portage and East Falls, bank alarm. Car 41 arrived  
12 and stated that there had been a robbery, there was no  
13 false alarm.

14 Q. When you heard that alarm, sir, approximately where was  
15 your car in Niagara Falls, and also about how far would  
16 this be from the bank?

17 A. I was approximately in the area of 72nd and Pine Avenue  
18 which would be between four and a half and five miles  
19 from the bank scene at the time the original call went  
20 out.

21 Q. And generally would that be in a north, south, east or  
22 west direction from the bank?

23 A. It would be east from the bank.

24 Q. Mr. Gee, I wonder if you could tell us, please, what  
25 you did after you got the call?

A. Initially I heard the call, I started westbound on



Direct examination of Niagara Falls Police  
Detective John Zaccarello at Suppression  
Hearing

- 1 Pine Avenue in the event anything did take place to go  
2 into the area. Car 41 arrived at the scene, broadcast  
3 that it had been a robbery and broadcast a description  
4 of a vehicle that had been used in the robbery.
- 5 Q. Now, you say you were heading west on Pine Avenue. You  
6 were heading back towards the bank?
- 7 A. That's correct.
- 8 Q. And do you recall what kind of a description it was you  
9 got of the vehicle used?
- 10 A. It was a blue Dodge, I believe, and they broadcast a  
11 license plate number.
- 12 Q. Do you recall that license plate number at this time?
- 13 A. No, I don't. It was a ZA or ZAY license plate, a  
14 rental plate.
- 15 Q. At the time you were given a specific license plate  
16 number, is that right?
- 17 A. Yes, sir.
- 18 Q. About where was it or when was it you heard that call,  
19 sir?
- 20 A. That would be approximately 10:58 hours to maybe 11:00  
21 hours.
- 22 Q. You were still driving along at this time?
- 23 A. No. At this time I was approximately at 56th and Pine  
24 Avenue.
- 25 Q. And was there anybody else in your car by the way?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 A. No, sir, I was alone.

2 Q. Would you tell us what you did next?

3 A. After Car 41 broadcast the description of the vehicle,  
4 description of the parties involved in the robbery --

5 Q. Excuse me. Car 41 also broadcast to you a description  
6 of the persons?

7 A. Yes. After the initial broadcast of the car being used,  
8 then he also broadcast a description of the vehicle,  
9 or a description of the parties involved.

10 Q. Would you tell us, sir, as best you recall, what that  
11 description was that was provided to you?

12 A. At that time it was just Negro male and Negro female.

13 Q. Nothing more detailed?

14 A. No.

15 Q. All right, would you pick up, sir, and tell us what you  
16 did after that?

17 A. At that time I advised Car 46, which is also a LaSalle  
18 car, that since the vehicle had been used to cover  
19 56th Street and Buffalo Avenue and I would take 56th  
20 and Pine Avenue in the event the vehicle was trying to  
21 leave the City we would block the two main routes.

22 Q. I wonder if before you would go on you would explain  
23 what you meant by those numbers and what you meant by  
24 a LaSalle car?

25 A. Niagara Falls is divided into three sections; the north



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 and the south and LaSalle. The bank robbery occurred  
2 at Portage and East Falls which is in the south end.  
3 After you go over past 56th Street eastbound, it is  
4 considered LaSalle. Car 43, 45, 44 and 46 are assigned  
5 to LaSalle, the four LaSalle cars.

6 Q. Will you continue then, please?

7 A. Car 46 took 56th and Buffalo Avenue in the event the  
8 vehicle would come down Buffalo Avenue. I took 56th  
9 and Pine Avenue. The other two LaSalle cars were tied  
10 up at the time.

11 Q. When you say you took 56th and Pine, what do you mean  
12 by that, sir?

13 A. I parked my vehicle on 56th Street. Pine Avenue is a  
14 four-lane highway. I parked my vehicle on 56th Street  
15 right at the corner so I could see all traffic going  
16 eastbound and westbound and have a good observation  
17 point for the people in the vehicles.

18 Q. Now, could you give us an idea of approximately how  
19 far you were from the bank at this time?

20 A. Approximately four miles.

21 Q. And the bank would have been to your east, is that  
22 correct?

23 A. Correct. No, to my west.

24 Q. To your west, I am sorry. Will you tell us what else  
25 you observed or what you heard on the radio?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 A. A few minutes later Car 47 was called, sent to the  
2 13th Street School where a citizen had called in about  
3 the vehicle used in the bank robbery had been abandoned.

4 Q. Would you tell us as best you recall exactly what was  
5 said, sir?  
6

7 MR. GREENMAN: Your Honor, I object, your Honor,  
8 as far as his testifying to what  
9 somebody else heard. It is hearsay.

10 THE COURT: That is technically correct, but  
11 does it make any difference?

12 MR. WAGNER: Your Honor, I don't think so.

13 THE COURT: Overruled. Go ahead.

14 THE WITNESS: Car 47 broadcast the description  
15 that Negro female, Negro male gotten out  
16 of a vehicle behind the 13th Street  
17 School, were then joined by a third or a  
18 second Negro female. Car 47 also  
19 broadcast a complete description right  
20 down to the clothing of the two Negro  
21 females and the Negro male involved.  
22

23 BY MR. WAGNER:

24 Q. Now, Mr. Gee, do you know approximately where the 13th  
25 Street School is?



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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- 1 A. Yes, sir, I am very familiar with it. It would be in  
2 the three hundred block of 13th Street.
- 3 Q. And you know about how far that 13th Street School is  
4 from the bank that had been robbed, sir?
- 5 A. Approximately two blocks.
- 6 Q. All right. Would you tell us what else you did, sir,  
7 what else you heard?
- 8 A. The broadcast and the description of the parties involved  
9 and I believe that's all at that time.
- 10 Q. Would you tell us as best you recall what that descrip-  
11 tion was?
- 12 A. It was a Negro male, medium build, five foot eight to  
13 five foot ten inches tall; two Negro females. The first  
14 Negro female was heavy set, short stocky build. The  
15 second Negro female was thinner and lighter complected.
- 16 Q. All right, and what else did you do, sir, at that time?
- 17 A. I stayed at 56th and Pine Avenue, still on the assump-  
18 tion that since the vehicle had been used in the bank  
19 robbery, that it wasn't anybody from the local area,  
20 it was somebody would try to leave the area by another  
21 means of another vehicle.
- 22 Q. Okay, and did there ever come a time when you saw anything  
23 that aroused your suspicion?
- 24 A. Yes, there did, sir. At approximately twenty-five minutes  
25 after 11:00, I observed a LaSalle taxi cab driven by a

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 Caucasian male approach the intersection of Pine Avenue  
2 and 56th Street eastbound. In the back seat of the  
3 LaSalle cab sitting from right to left was a heavy set  
4 Negro female. In the middle was a thinner built and  
5 lighter complected Negro female with a Negro male on  
6 the, - it would be the left side of the vehicle directly  
7 behind the Caucasian male driver.

8 Q. The male was on the left side of the vehicle inside the  
9 vehicle?

10 A. Correct. He was in the back seat behind the driver.

11 Q. Mr. Gee, when you saw this taxi cab, what direction  
12 was it heading relative to the bank that had been robbed,  
13 sir?

14 A. Away from the bank.

15 Q. And was that also away from the vicinity of the 13th  
16 Street School?

17 A. Yes, sir, it was.

18 Q. All right. Will you tell us what you did at that time,  
19 sir, if anything?

20 A. The vehicle passed my location. I advised police radio  
21 of what I had spotted. I asked police radio for another  
22 broadcast on the description of the occupants or of the  
23 parties involved in the robbery. I followed the taxi  
24 cab. I called for another backup car. I called for  
25 assistance because I was going to stop the car.



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 Q. Well, when you called for another description, was any  
2 given to you?
- 3 A. Yes. There was a rebroadcast of the description.
- 4 Q. And did that description generally match the persons  
5 you had seen in the back of the car?
- 6 A. Yes, it did.
- 7 Q. Could you tell us approximately how fast that cab was  
8 traveling if you could make an estimate?
- 9 A. Between fifty and fifty-five miles an hour.
- 10 Q. All right. Mr. Gee, will you tell us what you did then?
- 11 A. The taxi cab was in front of me about three or four  
12 cars. I got behind the vehicle. I was following the  
13 vehicle. By the time I got behind, it was approximately,  
14 oh, 66th to 70th Street on Pine Avenue eastbound.  
15 I got behind the vehicle, asked again radio for a backup  
16 unit. They didn't have any at the time is why I  
17 continued following the vehicle.
- 18 Q. All right. Would you tell us what you observed about  
19 the vehicle or its occupants, if anything, at that  
20 time?
- 21 A. Approximately, well, it would be 72nd and Pine Avenue  
22 still eastbound, between 72nd and 77th Street I  
23 observed the occupants of the cab turn around and look  
24 at me.
- 25 Q. Would you describe for us what it appeared, - what it

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
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1 looked like to you at that time, sir? In other words,  
2 did they turn around and look at you just once or more  
3 than once?

4 A. Several times, several times.

5 Q. Did they each turn around and look at you?

6 A. Yes.

7 Q. And what did you do, continue following them?

8 A. Radio advised me there were cars on the way into the  
9 area. I felt that since the description was very close  
10 I didn't want to alert them or make them any more  
11 nervous or make them scared to cause harm or anything,  
12 so I put my red roof lights on and I pulled the vehicle  
13 over at 80th and Pine Avenue.

14 Q. Mr. Gee, the car you were driving, was it a marked  
15 police car or would you describe, if it was, what type  
16 of markings it had on it?

17 A. It was a white '74 Dodge with double red roof lights  
18 on the top and the City of Niagara Falls Police insignia  
19 on both doors.

20 Q. And any color? Did it have particular markings that  
21 they mark police cars in the City?

22 A. Yes. It had the car Number 43 on both sides of the  
23 vehicle and on the license plate.

24 Q. Mr. Gee, when you saw the occupants of the back seat  
25 turning around and looking at you, were there any cars



Direct examination of Niagara Falls Police  
Detective John Zaccarel' t Suppression  
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- 1 between you and them at that time?
- 2 A. No. I was directly behind them.
- 3 Q. About how far were you behind them?
- 4 A. Approximately one and a half to two car lengths.
- 5 Q. And about how fast was the car going at that time?
- 6 A. Approximately fifty miles an hour.
- 7 Q. All right. You say you put on your red lights. Will
- 8 you describe what happened after that, sir?
- 9 A. The vehicle pulled directly over to the side at the curb.
- 10 The cab driver, - as I was radioing, I had the cab
- 11 stopped. The cab driver came back to my patrol car and
- 12 asked me what was wrong.
- 13 Q. About how far did the taxi park from your car, sir?
- 14 A. Oh, approximately ten feet.
- 15 Q. And was this just at the side of the road?
- 16 A. Yes, sir.
- 17 Q. All right. Would you describe what happened when the
- 18 taxi driver came back?
- 19 A. The taxi driver came back to my car. I told him to
- 20 have a seat in the passenger side of my vehicle. He
- 21 got into the vehicle. I asked him, I says, "Who do you
- 22 have in the vehicle and where did you pick them up?"
- 23 Q. And would you tell us what he said, if anything, sir?
- 24 A. He said two Negro females, a Negro male, three hundred
- 25 block of 14th Street.

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 Q. Did he give it to you all at once like that or did you  
2 ask him the two questions separately?
- 3 A. I don't recall.
- 4 Q. He did indicate to you, though, that he had picked them  
5 up in the three hundred block on 14th?
- 6 A. That's correct.
- 7 Q. All right. What did you do next, sir, if anything?
- 8 A. Officer Burek approached the car from the front. One  
9 of our City cars was coming up behind me. I got out  
10 of my vehicle, approached the Negro male, left-hand  
11 side of the vehicle; asked him to get out, asked him  
12 for some identification.
- 13 Q. All right, and you say you approached the car on the  
14 left-hand side, is that right?
- 15 A. That's correct.
- 16 Q. You were on the street side, is that right?
- 17 A. That's right.
- 18 Q. Did you have your gun out at this time?
- 19 A. No, I didn't.
- 20 Q. Did the man get out of the car?
- 21 A. Yes, he did.
- 22 Q. Was the car window open or was it closed, the car he  
23 was in?
- 24 A. I don't recall. I think it was partially down. I am  
25 not certain.



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 Q. Did you actually open the car door yourself, the taxi  
2 door?  
3 A. Yes.  
4 Q. And what did he do, if anything?  
5 A. Nothing. He got out and said he had no identification.  
6 Q. Okay. Would you describe this man that got out of the  
7 car as best you recall?  
8 A. He was a Negro male, medium build, approximately five  
9 foot eight to five foot ten inches tall.  
10 Q. All right. Did you have any conversations with the  
11 other people in the car?  
12 A. I myself, no.  
13 Q. Were there any other officers there?  
14 A. Yes. Officer Burek from the Niagara County Sheriff's  
15 Department approached the vehicle on the right side and  
16 Town of Niagara police officer Douglas Johnson and  
17 City Officer Michael Arber took the two females out  
18 from the right-hand side of the vehicle.  
19 Q. And where did these people go after they were taken out  
20 of the car at that immediate time?  
21 A. Officer Arber took the Negro male. Officers Johnson  
22 from the Town of Niagara Police Department and I believe  
23 Detective Hiltz had approached at that time and took  
24 the two Negro females.  
25 Q. Did they stay in the same area of the car?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 A. Yes.
- 2 Q. All right. What did you do next, sir, if anything?
- 3 A. I went into the, - still standing on the street, looked
- 4 into the back seat of the vehicle. There was a plastic
- 5 bag containing articles sitting on the seat. Officer
- 6 Burek from the Sheriff's Department was on the opposite
- 7 side of the vehicle looking in.
- 8 Q. All right. Would you describe this plastic bag for us
- 9 as best you recall it?
- 10 A. I believe it was a white bag. I am not positive on the
- 11 color now. It was a plastic bag like a shopping bag.
- 12 Q. Do you recall approximately what size it was?
- 13 A. Oh, approximately --
- 14 Q. Give us as best an estimate as you could at this time?
- 15 A. Oh, twelve by fourteen inches high; six to eight inches
- 16 wide.
- 17 Q. Okay, and that was sitting on the car seat?
- 18 A. That was on the car seat.
- 19 Q. Did you observe anything else in the taxi cab at this
- 20 time?
- 21 A. Yes. I observed a black attache case protruding out
- 22 from underneath the right front seat in the back.
- 23 Q. Would you describe what that looked like to you, sir,
- 24 before you did anything else at that time?
- 25 A. It looked like a black attache case.



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
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- 1 Q. Approximately how much of it could you see from where  
2 you were standing?
- 3 A. Approximately six to eight inches, maybe just about  
4 maybe half.
- 5 Q. When you saw this, were you inside the taxi cab or  
6 outside?
- 7 A. My feet were still on the ground outside this taxi cab.  
8 I was leaning inside.
- 9 Q. The taxi cab door was open?
- 10 A. Yes, both of them were.
- 11 Q. Were you resting your hands on the taxi cab seat?
- 12 A. Yes.
- 13 Q. All right. What did you do next, sir?
- 14 A. The first thing we did was look in the plastic bag.  
15 We were looking for a weapon.
- 16 Q. What did you find in the bag?
- 17 A. There was, I believe, a wig and some articles of clothing.  
18 There was no weapon.
- 19 Q. Did you do anything else?
- 20 A. Then Officer Burek and I picked up the attache case.  
21 Officer Burek undid one side of the case and I undid  
22 the other side of the case. We opened the attache case  
23 up.
- 24 Q. When you picked the attache case up, did you leave it  
25 in the car or did you open it up outside the car?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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1 A. No, Sheriff's Deputy Burek was on the right-hand side  
2 of the car. I was on the left-hand side. We were  
3 both leaning inside the vehicle. We both had our  
4 hands on the seat, resting ourselves on the seat.  
5 We picked the attache case up and opened it inside the  
6 vehicle.

7 Q. Will you tell us please what you saw in that attache  
8 case when you opened it?

9 A. We observed a large amount of money, fives and tens and  
10 twenties, I believe.

11 Q. All right. Did you do anything else at that time, sir?

12 A. We closed the attache case up.

13 Q. All right. What else did you do?

14 A. The attache case was turned over to Detective Hiltz  
15 since he was the only detective on the scene. The Negro  
16 male was put in the back of my patrol car. The two  
17 Negro females were put in either Car 45 or Car 44 with  
18 both of the officers in the vehicle.

19 Q. Mr. Gee, did you ever tell any of these people that they  
20 were under arrest?

21 A. No, I don't believe so.

22 Q. Do you know if anyone in your presence did that?

23 A. I don't believe so.

24 Q. What did you do next, sir, after you put this man in  
25 your car?



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 A. We took him, transported him back to the bank.
- 2 Q. Okay. When you got back to the bank, did you have any
- 3 further involvement with the investigation, Mr. Gee?
- 4 A. Just making out reports and everything.
- 5 Q. What happened to the custody of this man that you had
- 6 arrested or you had encountered in the taxi cab?
- 7 A. He was turned over to the FBI.
- 8 Q. And what happened to the two women with this man?
- 9 A. The one, the heavy set Negro female was also turned
- 10 over to the FBI and the, - the other Negro female was
- 11 arrested by our department.
- 12 Q. Mr. Gee, have you subsequently learned the identity of
- 13 these persons by name?
- 14 A. Yes, I have.
- 15 Q. Will you tell us what that is, please?
- 16 A. Mr. Carlton, Miss Smith and Sandra Lynn Soles.
- 17 Q. And I presume Mr. Carlton was the male, is that right?
- 18 A. That is correct.
- 19 Q. Which names match up with the descriptions of the
- 20 individuals you gave us earlier?
- 21 A. Carlton was the Negro male. Smith was the heavy set
- 22 Negro female and Miss Soles was the lighter complected,
- 23 lighter built Negro female.
- 24
- 25 MR. WAGNER: I have no further questions. Thank

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THE COURT: Mr. Zakia.

Q. Okay. Officer Gee, at approximately 10:55 you received a radio message concerning a robbery, is that correct?

Q. And you were stationed where?

A. I was at approximately 72nd and Pine Avenue when they put the call out.

Q. All right. When did you receive the second message?

A. Approximately three minutes later.

Q. And that stated and described the vehicle used in the robbery, the alleged vehicle used?

A. To the best of my recollection, yes.

Q. All right. How did it describe it?

A. If I am not mistaken, it was a blue and white Dodge four-door sedan and they broadcast a license plate number.

Q. Did the license number indicate anything to you one way or the other?

A. Yes. It indicated it was a rental car.

Q. And what did that mean to you?

A. That it could have been leased or --

Q. Well, it indicated anything to you as far as your conduct



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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1 after you heard that, where the car was from, where it  
2 would go, was it a local car, an out of town car?

3 A. It was rental car.

4 Q. All right. Did it describe anything else in this  
5 message?

6 A. The first initial message?

7 Q. The second message. The first message was that there  
8 was a robbery and three minutes later there was another  
9 message?

10 A. Correct.

11 Q. And that described the vehicle?

12 A. The vehicle.

13 Q. The license plate and anything else?

14 A. The occupants, a Negro male and a Negro female.

15 Q. And did it describe other than Negro male or Negro  
16 female?

17 A. I don't believe so, not at that point, no.

18 Q. And when was the third time you received a message?

19 A. Approximately five minutes after the last transmission,  
20 seven minutes, ten minutes after, in that area.

21 Q. And what was that message?

22 A. That the vehicle had been abandoned behind 13th Street  
School.

24 Q. Is that all they said?

25 A. No.

PAGINATION AS IN ORIGINAL COPY



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

- 1 Q. Did the license plate that was broadcast to you over  
2 the radio indicate whether or not this was a Buffalo  
3 vehicle?
- 4 A. No. There was subsequent radio transmissions before I  
5 stopped the cab that the vehicle had been a stolen  
6 vehicle out of the Buffalo area.
- 7 Q. All right. Did you figure it was from Buffalo on all  
8 of the information you had?
- 9 A. After I got the radio transmission that it had been a  
10 stolen vehicle, yes.
- 11 Q. Where would the fastest route out of Niagara Falls be  
12 from the bank?
- 13 A. From the bank either right down Pine Avenue or Buffalo  
14 Avenue.
- 15 Q. They are both the same, they are both close, that  
16 identically close to the bank, Buffalo Avenue and  
17 Pine Avenue?
- 18 A. Buffalo Avenue would be closer.
- 19 Q. It certainly would be much closer, would it not?
- 20 A. Not if you went right to Ferry Avenue.
- 21 Q. We are talking about Pine Avenue and Buffalo Avenue.  
22 Based on your experience, would it not be fair to say  
23 that the most logical approach out of the City of  
24 Niagara Falls would be either down Buffalo Avenue or  
25 the Robert Moses Parkway from that bank location?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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1 A. The Moses Parkway, no. Buffalo Avenue.--

2 Q. Moses Parkway, no.

3

4 THE COURT: Mr. Zakia, don't interrupt.

5 MR. ZAKIA: I am sorry.

6 THE COURT: Let us do it the other way around.

7 What is the difference in distance,

8 Mr. Gee, between, - from the area of

9 the bank using Buffalo Avenue, Pine

10 Avenue or the Robert Moses Parkway to

11 exit Niagara Falls?

12 THE WITNESS: Buffalo Avenue would take you right  
13 to the Grand Island Bridge. Pine Avenue  
14 would take you to 190 and 190 over to the  
15 Grand Island Bridge. The Robert Moses  
16 Parkway would take you again to the  
17 Grand Island Bridge.

18

19 BY MR. ZAKIA:

20 Q. How far is Buffalo Avenue from the bank?

21 A. Buffalo Avenue from the bank, approximately two, two and  
22 a half blocks.

23 Q. Two and a half blocks, correct?

24 A. Right.

25 Q. How far is the 10th Street entrance to the Robert Moses



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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- 1 but --
- 2 Q. Well, do you recall having more when you made your  
3 determination to stop the vehicle?
- 4 A. There was more information but I don't recall what it  
5 was at this time, no. Concerning clothing, but as far  
6 as build or anything else, that is essentially what I  
7 had.
- 8 Q. As far as the persons themselves, that is what you had?
- 9 A. Correct.
- 10 Q. You didn't know if that female was a hundred years old  
11 or fourteen years old or if the male was sixty-seven  
12 years old or six years old?
- 13 A. I believe there was an age description broadcast also.
- 14 Q. Officer, this is what we are trying to determine. What  
15 was that age description? What did you know at the  
16 time you decided to stop that vehicle?
- 17 A. Okay. The lighter complected, lighter built Negro  
18 female was described as in her teens, late teens. If I  
19 am not mistaken, the Negro male was described as in  
20 his twenties, and also the heavy set Negro female was  
21 described as in her twenties.
- 22 Q. You received this information over the car radio?
- 23 A. That's the only place I received information, yes.
- 24 Q. All right. Now, you testified that because a vehicle  
25 was used, you figured these people were from out of town?

Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

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1 THE COURT: In any of the transmissions you  
2 received, was there any connection  
3 between these three individuals and a  
4 cab?  
5 THE WITNESS: Yes. There was somebody came over  
6 the radio. I don't know which car it  
7 was, and said, "Have somebody check the  
8 cab company out", which is in the three  
9 hundred block of 12th Street, the LaSalle  
10 Cab Company.  
11 THE COURT: Anything else that you can recall?  
12 THE WITNESS: No.  
13 THE COURT: All right.  
14  
15 BY MR. ZAKIA:  
16 Q. When did you receive that message about the LaSalle Cab  
17 Company?  
18 A. There were a lot of transmissions during this time.  
19 Q. Before you stopped the cab?  
20 A. Yes, yes.  
21 Q. And what was that message, to the best of your recollec-  
22 tion?  
23 A. Somebody said, "You better have somebody check the cab  
24 company office on 12th Street and see if they picked  
25 anybody up in the area."



Direct examination of Niagara Falls Police  
Detective John Zaccarella at Suppression  
Hearing

1 Parkway from the bank?

2 A. I don't believe there is a 10th Street entrance. It is  
3 Quay Street.

4 Q. Quay Street entrance?

5 A. That is, I would say, about eight or nine blocks, about  
6 eight blocks.

7 Q. And how far is Pine Avenue from the bank?

8 A. Pine Avenue is four blocks.

9 Q. How many miles?

10 A. Maybe six-tenths of a mile.

11

12 THE COURT: Mr. Gee, we are going to have the  
13 transmissions here so then we will know  
14 what you arguably had in your mind, but  
15 to get the setting now, you did hear a  
16 transmission that said the vehicle used  
17 in the bank robbery was abandoned at  
18 School 13?

19 THE WITNESS: Behind 13th Street School, yes.

20 THE COURT: All right, and you also were informed  
21 of the description of the people who  
22 exited the abandoned vehicle?

23 THE WITNESS: That is correct, sir.

24 THE COURT: All right. You stopped a cab?

25 THE WITNESS: That is correct, sir.

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing.



Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

1 J. GARY D I L A U R A (111 West Huron Street, Buffalo,  
2 New York), a witness called by and in behalf of the Government,  
3 having been first duly sworn, was examined and testified as  
4 follows:

5  
6 DIRECT EXAMINATION BY MR. WAGNER:

7 Q. Mr. DiLaura, you are an agent with the FBI, is that  
8 correct?

9 A. Yes, sir.

10 Q. And you were working in that capacity on February 4,  
11 1975?

12 A. Yes, sir.

13 Q. Is it correct, sir, on that day you became involved with  
14 part of the investigation of the bank which had been  
15 robbed in Niagara Falls?

16 A. Yes, sir.

17 Q. And, Mr. DiLaura, is it also the case your involvement  
18 involved some contact with a man by the name of Edward  
19 Carlton who was a subject?

20 A. Yes, sir.

21 Q. Will you tell us, please, when you first became involved  
22 with Mr. Carlton, what you did and what you observed.

23 A. Well, the first time I observed Carlton was at the  
24 bank and the later time I observed him was back at the  
25 FBI office.

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1 Q. Would you tell us about the later time, sir, you  
2 observed him at your office?
- 3 A. I observed him in one of the interview rooms speaking  
4 with a couple of agents.
- 5 Q. Okay. About what time was that, sir?
- 6 A. I can't recall the specific time.
- 7 Q. Do you know who the agents were?
- 8 A. I believe Agent Al Davison was one, and as I recall,  
9 Agent Bill Kash I think was the other one, but I am  
10 not sure about Kash.
- 11 Q. What happened after you saw those agents talking to  
12 Mr. Carlton, if anything?
- 13 A. I was asked to sit in the room with him. I think Agent  
14 Davison asked me to sit in the room with him. Agent  
15 Davison had a few things to do, so I did that. I sat  
16 in the room with Carlton.
- 17 Q. About how long after their conversation with Carlton  
18 did you go into the room, approximately?
- 19 A. I really can't say for sure. I was under the impression  
20 that the interview that they had with him was concluded  
21 but I can't recall specifically how long it was.
- 22 Q. Was it a matter of minutes or was it a matter of hours?
- 23 A. Oh, it was a matter of minutes, I am sure.
- 24 Q. Could you give us an estimate as best you recall?
- 25 A. I would say somewhere around thirty minutes, forty-five



Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

1 minutes.

2 Q. And would you tell us, Mr. DiLaura, what if anything  
3 happened while you were in the room with Mr. Carlton?

4 A. I was sitting with Carlton and talking in general about  
5 things, just passing the time of day, more or less.

6 Q. What kind of things, if you recall?

7 A. I asked him how he was feeling and he said he had an  
8 upset stomach and I asked him if he was okay and he said  
9 he was. I asked him if he was from the area, things of  
10 this nature, talked about the weather, Buffalo being, -  
11 the weather in Buffalo being pretty bad at times, and I  
12 believe I asked him if he was employed anyplace or  
13 something to that effect, and the conversation turned  
14 to money and he said something to me to the effect that  
15 he didn't have much money or was hurting for money,  
16 something to that effect, and I asked him, "Well, whose  
17 money was in the back of that car, the taxi cab", and  
18 he said, "That was my money", and I said, "Well, how do  
19 you explain if that was your money that some of it, as  
20 I understand, some of it is prerecorded bills from the  
21 bank robbery earlier that day". Oh, I said, I asked him  
22 where he got the money. I asked him where he got the  
23 money, excuse me, and he said, "Gambling", and I said,  
24 "Gambling", I said, "How do you explain some of this  
25 money is prerecorded bait money from the bank robbery",

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

1 and he said something to the effect, "Well, bank robbing  
2 is a gamble".

3 Q. Did you have any other conversation with him following  
4 that statement?

5 A. I asked him to elaborate on that and he said that he  
6 didn't care to and that was just about it.

7 Q. Did you have any other involvement with Mr. Carlton that  
8 day, sir?

9 A. I don't think so.

10

11 MR. WAGNER: Okay. I have no further questions.

12

13 CROSS EXAMINATION BY MR. GREENMAN:

14 Q. Agent DiLaura, did you review any notes before you  
15 testified here today?

16 A. Yes, I did.

17 Q. Agent DiLaura, I am going to show you Government Exhibit  
18 12 for identification and ask you if that is the notes  
19 you reviewed before your testimony here this morning,  
20 or this afternoon?

21 A. Yes, sir, that is a copy of it.

22 Q. Is that all you reviewed?

23 A. Regarding Mr. Carlton, yes.

24 Q. That which you testified to just now?

25 A. Yes, yes, sir.



Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1 Q. Now, Agent DiLaura, did you make any notes on February  
2 the 4th that were written down with regard to that  
3 testimony?
- 4 A. Just regarding what he told me yes.
- 5 Q. With regard to what Carlton told you?
- 6 A. Yes.
- 7 Q. You had some written notes?
- 8 A. Yes, sir.
- 9 Q. Okay, and were those notes incorporated into this  
10 Government Exhibit 12?
- 11 A. Yes, sir.
- 12 Q. When did you first notify anyone that you had had this  
13 conversation with Mr. Carlton?
- 14 A. When I came out of the interview room and somebody else  
15 walked in, I believe.
- 16 Q. Can you recall who walked in?
- 17 A. No. I think Agent Kash might have been in and out of  
18 the room a couple of times, I think. I observed Agent  
19 Davison. I don't know whether he was in the room or out  
20 of the room or just walking by.
- 21 Q. Now, could you hear the conversations that Agent Kash  
22 and Agent Davison were having with Mr. Carlton before  
23 this conversation?
- 24 A. The only thing that I recall hearing was one of the two  
25 agents telling him what his rights were.

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1 Q. Okay. Did you hear his response to those statements?
- 2 A. No, sir, I didn't.
- 3 Q. How big is the room you were sitting in, Agent?
- 4 A. Which room are you speaking of?
- 5 Q. The interview room.
- 6 A. The interview room that I was in with Carlton, guessing, -
- 7 it is not a large room. I would say it was probably
- 8 eight or nine feet by ten feet, something like this.
- 9 Q. Now, when you first saw Mr. Carlton talking with Agents
- 10 Davison and Kash, where was he sitting?
- 11 A. Where was who sitting, sir?
- 12 Q. Carlton.
- 13 A. Well, as I recall, there is a desk in that room and I
- 14 believe Agent Davison was sitting behind the desk and
- 15 Carlton was sitting in a chair, I think on the immediate
- 16 left as you enter that room. That is recalling from
- 17 memory. I am not positive.
- 18 Q. And this is in downtown Buffalo?
- 19 A. 111 West Huron.
- 20 Q. Now, you testified you were aware of the fact that
- 21 Agents Davison and Kash had some conversations with
- 22 Carlton or at least were giving him his rights?
- 23 A. Yes, sir.
- 24 Q. Okay. Do you know what rights or did you hear what rights
- 25 he was given?



Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1 A. I believe wh I walked by I think Davison was the  
2 one who was reading the form that we use. That is what  
3 it sounded like anyways.
- 4 Q. Okay. Showing you Government's Exhibit 3, the interroga-  
5 tion advice of rights form, is that what you are talking  
6 about, the form that you use?
- 7 A. Yes, sir.
- 8 Q. Did you see Mr. Carlton sign anything on that piece of  
9 paper?
- 10 A. No, sir.
- 11 Q. Okay, and you were in that room, the same room that  
12 Agent Davison and Agent Kash were sitting at that time  
13 when they were giving him his rights?
- 14 A. No, sir.
- 15 Q. Well, where were you that you were able to hear these  
16 conversations?
- 17 A. I was walking by the room.
- 18 Q. Oh, and the door was open?
- 19 A. Yes, sir.
- 20 Q. How long after you heard them giving him his rights was  
21 it that you walked into the room?
- 22 A. Well, I was asked to sit with him and as I said before,  
23 I think it was somewhere around thirty or forty-five  
24 minutes, but I can't be positive.
- 25 Q. Okay. Who asked you to sit with Mr. Carlton?

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1 A. I believe it was Al Davison, Agent Davison.
- 2 Q. Okay, and where did he go?
- 3 A. I don't recall.
- 4 Q. Did he leave the room?
- 5 A. Yes, sir.
- 6 Q. What about Agent Kash, did he leave the room also?
- 7 A. There was another agent in and out of the room while I
- 8 was in there with Carlton. I believe I testified before
- 9 I am not sure whether he was in and out of the room or
- 10 whether it was Agent Kash or not. I think it might
- 11 have been Kash but I am not positive.
- 12 Q. Okay. In any event, you specifically recall him being
- 13 read his rights?
- 14 A. Right.
- 15 Q. Okay. Did you make any inquiry when you walked into
- 16 that room some thirty minutes later as far as what had
- 17 happened, whether Carlton had made any statements?
- 18 A. No, sir.
- 19 Q. You made no inquiry at all, is that correct?
- 20 A. As I recall, I didn't make any inquiry.
- 21 Q. When was it you first decided, - after you entered the
- 22 room, when was it that you first decided to have some
- 23 kind of conversation with Mr. Carlton?
- 24 A. It wasn't any instant decision. It was just two people
- 25 sitting in the room just generally talking.



1 Q. Okay. Well, there came a time, did there not, that you  
2 specifically asked him where he got the money from,  
3 isn't that correct?

4 A. Yes, sir. Well, I asked him who, - I believe whose  
5 money was in the cab, whose money was in the car,  
6 something to that effect at first. That is what  
7 started that particular portion of the conversation.

8 Q. Well, Agent DiLaura, you didn't read Mr. Carlton his  
9 rights, did you?

10 A. No, sir.

11 Q. From this form?

12 A. No, sir.

13 Q. Did you make any inquiry from Agent Davison at all with  
14 regard to what Mr. Carlton had said with regard to the  
15 questioning as far as whether he wished to waive his  
16 rights or not?

17 A. No, I don't think I did.

18 Q. You went right ahead and questioned him at a later time  
19 as far as the whereabouts or where he got the money from  
20 that was found in the taxi cab, is that correct?

21 A. It wasn't a matter of questioning. It was a matter of  
22 general conversation that began with me asking him how  
23 he felt, and we proceeded into the weather. It involved  
24 into employment. It involved into money which led him  
25 to the conversation that I had with him that I made a

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

1 matter of record.

2 Q. Okay. Well, I am not going to try and belabor the  
3 question, but you had certain conversations with him  
4 when you walked into the room with regard to the  
5 weather of the City of Buffalo and certain other ideas,  
6 is that correct?

7 A. Yes.

8 Q. You didn't record that in this, did you?

9 A. No, sir.

10 Q. Okay. There came a time your conversation switched  
11 to the money?

12 A. Yes, sir.

13 Q. And again I will ask you, you did not read him his  
14 rights, did you?

15 A. No, sir.

16 Q. And you made no inquiry as to whether he wished to  
17 waive his rights from his previous conversations with  
18 Agent Kash or Agent Davison?

19 A. No. I made no inquiry.

20 Q. And you made no inquiry as to whether he desired to have  
21 an attorney present with him when you talked with him,  
22 isn't that correct?

23 A. That's correct.

24 Q. Okay, and when the conversation switched from the  
25 weather in Buffalo to where the money came from, again



Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

- 1       you made no inquiry as to whether he wanted an attorney  
2       present with him, did you?
- 3   A.   He had already been asked that and I made no second  
4       inquiry.
- 5   Q.   Okay, but specifically referring to Government Exhibit  
6       12, you reported this conversation, didn't you?
- 7   A.   Yes, sir.
- 8   Q.   And when you asked him the question after he had said  
9       he didn't have much money and you asked, "How do you  
10      explain it", or, "Where did you get the money", those  
11      questions were intended to receive an answer, isn't  
12      that correct?
- 13  A.   Yes, I would say.
- 14  Q.   Okay, and hadn't you determined at that time that if  
15      he told you where he got the money, you would record  
16      that and it could be used against him later on?
- 17  A.   Would you say that again?
- 18  Q.   Okay. The statements, - the statement about the money  
19      specifically was intended to receive an answer, is that  
20      correct?
- 21  A.   Yes, sir.
- 22  Q.   And specifically you knew at that time that if he made  
23      an incriminating statement about where he got the money  
24      that that could be used against him at a later time?
- 25  A.   Yes. He and I were both aware of that, yes, sir.

Direct and cross-examination of F.B.I. Agent  
Gary DiLaura at Suppression Hearing

1 MR. GREENMAN: Well, I will object to that response,  
2 your Honor. He doesn't know what my  
3 client's understanding was or not.

4 THE COURT: Overruled.

5  
6 BY MR. GREENMAN:

7 Q. And again, Officer, at a later time did you give him  
8 his rights again after he made the statement? Was  
9 anything said to him with regard to his rights, even  
10 after the statement was made?

11 A. No, sir.

12  
13 MR. GREENMAN: I have no further questions, your  
14 Honor.

15 THE COURT: All right. Mr. Zakia.

16  
17 CROSS EXAMINATION BY MR. ZAKIA:

18 Q. Agent DiLaura, did you have occasion to come into  
19 contact with Deborah Ann Smith?

20 A. Yes, sir.

21 Q. When was the first time you met her?

22 A. The first time I saw her was at the bank in Niagara Falls.

23 Q. What transpired there?

24 A. Specifically regarding what, sir?

25 Q. Specifically regarding your contact with Deborah Ann



Oral argument of defendant's motion to dismiss on  
speedy trial grounds, December 29, 1975.

Oral argument of defendant's motion to dismiss  
on speedy trial grounds, Dec. 29, 1975

1 PROCEEDINGS: December 29, 1975.

2 APPEARANCES: RICHARD J. ARCARA, United States Attorney,  
3 by EDWARD J. WAGNER, Assistant United  
4 States Attorney.

5 HERBERT GREENMAN, Esq., Attorney for  
6 the Defendant EDWARD CARLTON.

7 THE COURT: Why not sit here, Mr. Carlton, so  
8 you can hear what we are saying.

9 MR. GREENMAN: Your Honor, this is a motion brought  
10 by my client pro se. I have had the  
11 opportunity to discuss the matter with  
12 him at some length with regard to that.  
13 Before I go into that, your Honor, I just  
14 spoke with Mr. Wagner a few minutes ago  
15 on this particular case and there was  
16 one thing that did come up during the  
17 past week which I discovered really for  
18 the first time.

19 There was some question, your Honor,  
20 as far as what items were sought to be  
21 suppressed by the defendants and which  
22 items were sought to be held able to be  
23 used at trial by the Government and in  
24 a letter sent by Mr. Wagner to you on  
25 October 8, 1975 he included those amounts



Oral argument of defendant's motion to dismiss  
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1 which we had viewed in his office, of the  
2 items of physical evidence taken during  
3 various searches with regard to this  
4 matter. In reviewing, however, the  
5 transcript last week, it came to me that  
6 the items as enumerated in Number 2 were  
7 never really mentioned at all during the  
8 suppression hearing and for that reason  
9 there is no testimony, no evidence before  
10 this Court as to where those items were  
11 taken.

12 THE COURT:

Number 2 in the letter?

13 MR. GREENMAN:

It reads one black attache case.

14 There was testimony as to that, your Honor.

15 THE COURT:

All right.

16 MR. GREENMAN:

17 Then it goes on to state containing  
18 an address book, a photo album and some  
19 miscellaneous papers relating to the  
20 State University of New York. Those  
21 items, your Honor, were never mentioned.  
22 I believe Officer Gee testified on cross  
23 examination that he could remember nothing  
24 besides a ski mask and the attache case  
25 containing some money which was taken  
from the cab and just for that reason,

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1 your Honor, if I did stipulate to those  
2 items being found in the particular cab  
3 and the location in which they were found,  
4 I would have to withdraw that stipulation  
5 to that limited effect as far as those  
6 items which were just read to the Court.

7 THE COURT: I cannot remember any testimony  
8 about an address book or photo album.

9 MR. WAGNER: I think Mr. Greenman is correct,  
10 your Honor, but Officer Gee testified  
11 he found a case and its contents and the  
12 contents were turned over to other  
13 officers and it seemed to me that for  
14 purposes of the hearing --

15 THE COURT: Were these materials in the case?

16 MR. WAGNER: They were in the case.

17 MR. GREENMAN: That is a question though, your  
18 Honor. That is a question.

19 THE COURT: We can do two things here. You can  
20 talk it over and you could stipulate or  
21 we could have Officer Gee come back and  
22 with any other officer who may be  
23 necessary for it and have testimony, or  
24 we could wait for the time of trial when  
25 they will be here anyway, so we can find



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1 out definitely. It is the Government's  
2 position that these articles were in the  
3 attache case and if the Government is  
4 right and then if you are right, that it  
5 ought to be suppressed and whatever is  
6 in the attache case would be suppressed,  
7 and if the Government is right and it  
8 should not be suppressed, then if relevant,  
9 material, not prejudicial, highly  
10 prejudicial or something, nothing to do  
11 with the case, then they would be admitted  
12 in evidence.

13 MR. WAGNER:

That seems logical.

14 THE COURT:

I think the best thing to do, Mr.  
15 Greenman, is to wait.

16 MR. GREENMAN:

That's fine, your Honor.

17 THE COURT:

But I think in calling it to our  
18 attention now was a good idea.

19 MR. GREENMAN:

Your Honor, one other matter. In  
20 this morning's mail I received a copy  
21 of a case which was sent to the Court  
22 and to defense counsel by Mr. Wagner and  
23 to be honest with you, I have not had a  
24 chance to read the case, and I believe  
25 it is in support of the admissions made

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by the defendant Carlton.

1  
2 THE COURT:

I think you have to wade through a  
lot. That case had to do with a  
Connecticut grand jury proceeding.

3  
4  
5 MR. WAGNER:

It had to do with a lot of other  
things.

6  
7 THE COURT:

It is almost the last page of that.

8 MR. WAGNER:

I sent Mr. Greenman a copy because  
I didn't think he would have a slip  
opinion.

9  
10  
11 MR. GREENMAN:

That's right.

12 THE COURT:

I looked at the case before but  
since it seemed to have to do with  
Connecticut grand jury proceedings, I  
didn't really wade through a lot of  
other material. You have to wade through  
a lot of other material before you get  
to the point.

13  
14  
15  
16  
17  
18  
19 MR. GREENMAN:

I just request, your Honor, that I  
have a day or two to review this and if  
there is any reason for me to respond  
to the Court, could I have that opportunity  
before the Court makes his decision with  
regard to the motion to suppress.

20  
21  
22  
23  
24  
25 THE COURT:

All right.



1 MR. GREENMAN:

Your Honor, finally there is a  
2 two-pronged motion brought pro se by  
3 my client, Mr. Carlton. I indicated to  
4 the Court I had the opportunity to talk  
5 with him. I indicated to Mr. Carlton  
6 that the motion with regard to the grand  
7 jury, the grand jury array was already  
8 brought by myself and defense counsel,  
9 co-counsel, and denied by the courts, so  
10 that question basically is moot at this  
11 time in view of the fact the Court has  
12 decided this question. I believe that  
13 the Court decided it at a time when Mr.  
14 Carlton was out of the courtroom and  
15 that might have led to some confusion on  
16 his part as far as bringing that motion.

17 The second part of his motion,  
18 however, your Honor, deals with failure  
19 of the Government to give my client a  
20 speedy trial. I have, your Honor, over  
21 the past week or so, had the opportunity  
22 to chronologically outline the steps  
23 that this case took and up until May at  
24 the time we brought our motions, every-  
25 thing seemed to be okay, but for some

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1 reason we go from May until September,  
2 the middle of September, - actually the  
3 middle of August when nothing really  
4 happened on this case, even though the  
5 Government did move the case ready for  
6 trial at a previous time and, of course,  
7 since that time, since September we  
8 went through a lengthy suppression motion.  
9 We requested the time in which to submit  
10 a memorandum of law and, of course, it  
11 took some time for the transcripts to be  
12 typed because they were somewhat lengthy.  
13 That is basically the gist of the motion,  
14 however, your Honor, as far as my client  
15 is concerned. As I indicated to the  
16 Court, it was his feeling that he was  
17 deprived of a speedy trial due to a  
18 lengthy delay of at this time almost  
19 ten months. I did indicate to him,  
20 however, your Honor, the last time I  
21 spoke with him that part of the delay  
22 might have been attributable to us in  
23 view of the fact we had brought numerous  
24 motions against the grand jury and, of  
25 course, the suppression motion as to



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1 physical evidence and the admissibility  
2 of various statements by co-defendants  
3 and himself and that is actually the  
4 status of that particular motion, your  
5 Honor.

6 THE COURT:

Mr. Wagner.

7 MR. WAGNER:

Well, your Honor, briefly we take  
8 the position that the Government was  
9 ready for trial very early in the case  
10 and as Mr. Greenman has suggested, it was  
11 the defendants' motions, the hearings on  
12 those motions, the briefs we submitted  
13 and waiting for transcripts, which was a  
14 relatively short time, which has consumed  
15 the bulk of the last ten months and I  
16 feel that it has not been a violation of  
17 the speedy trial rules and I urge that  
18 Mr. Carlton's motion be denied.

19 THE COURT:

I suppose when you were before the  
20 Magistrate you do not claim delay then,  
21 or do you?

22 MR. GREENMAN:

No, your Honor. Basically, your  
23 Honor, we were given some time and the  
24 matter was argued before the Magistrate  
25 in March, a short time after the time in

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1 which Mr. Carlton was arraigned.

2 THE COURT: Then it was referred to me, you say,  
3 after the discovery was completed.

4 MR. GREENMAN: That's right. I believe March 11th  
5 was the date I had indicated on my file,  
6 your Honor.

7 THE COURT: Then my usual practice is to have  
8 the lawyers come in and indicate to me  
9 whether they are desirous of filing  
10 additional motions and then when that  
11 happened, the motion was made attacking  
12 the grand jury proceedings.

13 MR. GREENMAN: That's correct, among other things,  
14 your Honor.

15 THE COURT: As I remember that, unfortunately  
16 there were a number of other cases on  
17 the calendar that had the same motion  
18 that was directed to this, the way the  
19 grand jury proceedings went ahead and a  
20 number of people wanted to file briefs  
21 and so there was delay to get the briefs  
22 in. This could not certainly be laid  
23 at the doorstep of the United States  
24 Attorney, and then I tried to make my  
25 decision as soon as possible, keeping in



1 mind other problems the Court had. We  
2 had the hearing as soon as we could. We  
3 had the briefs filed. We have had the  
4 argument. I expect to have the decision  
5 on this, I hope sometime next week, and  
6 I will set a trial of the case for the  
7 21st of January. This is the earliest  
8 time I could fit it in because of other  
9 duties here. I think on the overall,  
10 it is unfortunate and we are trying to  
11 get up procedures to shorten times in  
12 these cases, but under the rules, we  
13 cannot say that the delay was caused by  
14 the Government and therefore I will deny  
15 the motion.

16 MR. GREENMAN:

Your Honor, there is one other,  
17 actually two other questions in my mind  
18 with regard to this particular case.  
19 One motion is left open and that, of  
20 course, is a motion with regard to my  
21 client's prior record, if in fact he  
22 should choose to testify at trial. I  
23 believe, however, that that might be left  
24 until at least the time of trial.

25 THE COURT:

In the meantime, Mr. Wagner, you

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1 look at the prior record and indicate to  
2 Mr. Greenman what portion of that record  
3 you feel that you would be entitled under  
4 the rules to, and I think that the  
5 Federal Rules of Evidence now would  
6 control, that you would attempt to cross  
7 examine him about. I think that that  
8 may solve it, so you will know definitely,  
9 but I think the best thing to do is we  
10 will wait until trial before I take it  
11 on.

12 MR. GREENMAN:

The final matter, your Honor, is  
13 with regard to possibility of severance.  
14 I talked to Mr. Williams about this at  
15 a previous time. The status of the  
16 case right now is that all co-defendants  
17 will be tried jointly and the problem,  
18 of course, being as the Court knows from  
19 the suppression hearing that there are  
20 numerous statements made by co-defendants  
21 which implicate my client and mention  
22 him by his name and for that reason, your  
23 Honor, I would just like to have the  
24 opportunity to talk with my client and  
25 the possibility, number one, might be for



1 the Government to redact my client's  
2 name or to redact those parts of the  
3 Government's statements should the  
4 Government desire to go to trial with  
5 regard to all three co-defendants or in  
6 the alternative, if that is not a  
7 possibility, I believe we probably will  
8 have to move for a severance.

9 MR. WAGNER: I think, your Honor, we would clearly  
10 redact the statements. I think we have  
11 to under the law and we are prepared to  
12 do that and I can sit down with Mr.  
13 Greenman and we can work out a method  
14 for doing that, I am sure. Whether he  
15 would still want to make his motion, I  
16 don't know.

17 THE COURT: After you decide what you think  
18 should go in, send a copy of that to  
19 Mr. Greenman and a copy to the Court.

20 MR. WAGNER: I will do that, your Honor.

21 THE COURT: So we can be able to take this up  
22 before trial.

23 MR. GREENMAN: I believe that is all, your Honor,  
24 that I have.

25 THE COURT: Thank you, Mr. Greenman.

Judge Curtin's decision and order on motion to suppress.



Judge Curtin's decision and order on motion  
to suppress

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

-vs-

CR-75-35

JAMES WILLIAMS, a/k/a EDWARD CARLTON  
DEBORAH ANN SMITH  
DOROTHY GOLDSMITH

Defendants

DECISION  
and  
ORDER

CURTIN, DISTRICT JUDGE

Judge Curtin's decision and order on motion  
to suppress

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-75-35

JAMES WILLIAMS, a/k/a EDWARD CARLTON  
DEBORAH ANN SMITH  
DOROTHY GOLDSMITH

Defendants

---

APPEARANCES: RICHARD J. ARCARA, ESQ.  
United States Attorney (EDWARD J.  
WAGNER, ESQ., of Counsel), Buffalo,  
New York, for the Government.

DIPASQUALE, PACK, HAUSBECK, BALL &  
GREENMAN (HERBERT L. GREENMAN, ESQ.,  
of Counsel), Buffalo, New York, for  
defendant James Williams, a/k/a Edward  
Carlton.

RUNFOLA & BIRZON (NELSON F. ZAKIA, ESQ.,  
of Counsel), Buffalo, New York, for  
defendant Deborah Ann Smith.

EDWARD J. MCGUINNESS, ESQ., Buffalo, New  
York, for defendant Dorothy Goldsmith.

The defendants in this case were charged with  
the robbery of a Manufacturers and Traders Trust Company  
bank in Niagara Falls, New York, on February 4, 1974.  
They have moved to suppress evidence seized upon arrest



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to suppress

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and in the search of certain premises. They further move to suppress several oral statements. A hearing was held and the court has had the benefit of briefs filed by the attorneys for the defendants and for the Government. The following constitutes the findings of fact and conclusions of law.

At about 10:55 a.m. on February 4, 1974, a Niagara Falls, New York police radio reported that a bank robbery had occurred at the Manufacturers and Traders Trust Company branch located on Portage Avenue and East Falls Street. At that time, the information transmitted was that the robbery had been perpetrated by two males who fled in a blue car, New York license plate No. 673 ZAX. About ten or fifteen minutes later, the police radio reported that the vehicle was a rental car from Cheektowaga, New York and had been abandoned at 13th and Niagara Street (about two blocks from the bank). Shortly after, another report followed stating that a black male and a black female were involved. The male was described as tall and slender, wearing a ski mask, black pants and a dark colored pea coat, either black or dark navy blue.

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The female was described as light-skinned, wearing a long plaid coat, red slacks and being in her late teens or early twenties. At 11:08 the radio broadcast that two individuals from the gas company saw three persons heading north on Thirteenth Street toward Niagara Street and that they lost sight of them there. The third person was described as a woman about five feet three, heavy set, wearing a yellow and red checkered coat, and in her early twenties.

These transmissions were monitored by Officer Robert Gee of the Niagara Falls Police Department, who had stationed his vehicle at Pine Avenue and 56th Street, about four miles from the bank. Pine Avenue is a main thoroughfare in the City of Niagara Falls and Gee considered it a logical escape route for any individuals who might have come from out of town to rob the bank. He concluded that since the robbers had used a rented vehicle, they were probably not from the local area and, since they had abandoned their vehicle, they would attempt to leave by cab or other vehicle. At 11:25 a.m., about twenty-five or thirty minutes after the initial report

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of the bank robbery, Officer Gee observed a LaSalle Company taxicab with two black females and one black male in the back seat approach the intersection where he was stationed, heading away from the bank. Officer Gee followed the cab for a few blocks, saw the individuals in the rear seat turn around and look in his direction several times. In his opinion, the people in the rear of the cab met the description of the suspects of the bank robbery and he called other officers for assistance. He could observe that one female was heavy set, the other thinner build with a lighter complexion, and a black male sitting behind the driver's seat. He stopped the cab at Pine Avenue and 81st Street. The cab driver told him that he had picked up the fare at the 300 block of Fourteenth Street. Gee knew this was near the place where the abandoned robbery car was found. After asking the male in the cab for identification, which he could not produce, Gee frisked him and then placed all three individuals under arrest.

When the officers looked through the windows of the cab, they could observe a black attache case

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protruding from under the back of the right front passenger seat, and a pink plastic bag lying on the back passenger seat. The officers seized the case and the plastic bag. The case contained a large amount of money stacked in bundles of five and ten dollar bills. The pink plastic bag contained one red ski cap, one pair of black slacks, and a blue and white striped jersey.

The individuals arrested were Sandra Soles, sixteen years of age, and defendants James Williams, a/k/a Edward Carlton, and Deborah Ann Smith. Sandra Soles is charged as a coconspirator, but not a defendant in this case. Proceedings were placed against her in the state court as a juvenile. All three suspects were returned to the bank and were advised of their Miranda rights by FBI Agent Allan Davison. After a brief discussion with officers of the Niagara Falls Police Department, Sandra Soles accompanied them and FBI Agent Charles Ahart to a house located at 320 - 14th Street, not too far from the bank, where she and the defendants had met that morning prior to the bank robbery. Sandra Soles said the apartment was "Dot's". Information was received from



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a Niagara Falls detective that "Dot" was probably Dorothy Goldsmith. The officers entered an outside doorway and proceeded up to the second floor by a common hallway to a second floor apartment which Sandra Soles said was the meeting place. They knocked on the door, but there was no answer. Determining that Dorothy Goldsmith was not at home, they left the building. Before leaving, Lieutenant John Zaccarella of the Niagara Falls Police Department walked to the basement. This area was reached from the outside by using the same entrance, but proceeding down a flight of stairs instead of up to the Goldsmith apartment. The door to the basement was open. It was used commonly by all tenants, mainly for washing and drying clothes. At the foot of the stairs, Zaccarella noted a large white plastic garbage bag which contained a handgun, one black or navy blue pea coat, one red and blue ski cap, one black and rust woman's jacket, and one pair of red slacks. Sandra Soles was brought back to the basement and she identified some of these items as clothing she had worn during the robbery. The officers had no search warrant and no consent to search these premises.

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Dorothy Goldsmith was located by the agents at about 5:00 p.m. that afternoon. By that time, the officers had received authorization for a warrant for her arrest. She was given an advice of rights form to read. She told the agents that she understood the form and would sign it. She admitted her participation in the robbery to the agents during the ride from Niagara Falls to Buffalo. She told them that she had given her sister some money which was the proceeds of the robbery. She turned over four twenty dollar bills to the agents.

After the defendant Williams arrived at FBI headquarters in Buffalo, he was again advised of his rights by FBI agents and interviewed. He told the agents that he did not want to make a statement and questioning stopped. The interviewing agents left the room, but Williams remained with Special Agent Gary DiLaura. For a time they engaged in general conversation. Then Williams said to DiLaura that he did not have much money. When DiLaura asked where he got the money, Williams replied "gambling." Then DiLaura asked: "How do you explain some of this money is prerecorded bait money from the bank robbery?" Williams' response was: "Well, bank



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robbing is a gamble."

Special Agents Phyllis Maclean and DiLaura also interviewed defendant Deborah Ann Smith, giving her detailed Miranda warnings. She signed a statement saying she understood her rights and was willing to make a statement. She gave the agents her version of the robbery but, at one point, told them she had not been completely truthful. Admittedly as an interrogation tactic, DiLaura misrepresented to her that one of the others had implicated her. She then provided additional truthful information.

The questions presented for decision at this hearing are the following:

1. Did Officer Gee have probable cause to arrest defendants Williams and Smith in the taxicab?
2. Was the search of the taxicab incident to the arrest of these defendants unreasonable?
3. Were the items found in a garbage bag in the basement of defendant Goldsmith's apartment house properly seized?
4. Were the statements of defendants Williams, Smith and Goldsmith given voluntarily?

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Under the circumstances, Officer Gee had sufficient probable cause to arrest defendants Williams and Smith. In United States ex rel. Wilson v. LaVallee, 367 F.2d 351 (2d Cir. 1966), United States ex rel. Williams v. LaVallee 415 F.2d 643, 645-46 (2d Cir. 1969), and in United States ex rel. Mungo v. LaVallee, 372 F.Supp. 742, 744 (E.D.N.Y. 1974), the facts were very similar to those in this case and the arrest of the defendants was found to be proper. The recent Second Circuit decision in United States ex rel. Pella v. Reid, Docket No. 75-2076 (2d Cir., Dec. 11, 1975), does not require a different holding. Gee proceeded in a cautious fashion before he placed these individuals under arrest. After spotting the cab, he asked for a recheck of the identifications and, after stopping the cab, he found out from the cab driver that he had picked up his fares in a spot close to the bank where it was reported that individuals had abandoned the car used in the robbery. This information was sufficient to constitute probable cause for the arrest. Moreover, under Terry v. Ohio, 392 U.S. 1 (1967), Officer Gee clearly had enough

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information to stop the cab initially. The information he had at that time would warrant a man of reasonable caution taking the action which he took under the circumstances.

The officers properly seized the attache case and plastic bag from the rear seat of the taxicab. The seizure may be justified on a number of grounds. Although the individuals were out of the cab when the officers looked in the windows, nevertheless, the seizure may be considered as one incident to a lawful arrest. Chimel v. California, 395 U.S. 752 (1969); Preston v. United States, 376 U.S. 364 (1963); United States v. Edwards, 415 U.S. 800 (1974). It would be unreasonable to expect the arresting officers to leave the personal effects of the defendants in the taxicab while taking the defendants back to the scene of the crime for identification. The area searched was within the immediate control of the defendants and there were exigent circumstances. Furthermore, the probable cause justifying the arrest of the defendants also justified the search of the car. United States v. Lam Muk Chiu, 522 F.2d 330,

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332 (2d Cir. 1975); and Chambers v. Maroney, 399 U.S.  
42-51 (1970).

The defendants' motion to suppress the evidence found in the plastic garbage bag in the basement of the building in which defendant Dorothy Goldsmith was a tenant is denied. At this stage of the proceedings, the court does not know whether the Government intends to introduce the evidence found in the basement against the defendant Dorothy Goldsmith. The court will defer ruling on that question until further information is received. As for defendants Williams and Smith, there are a number of reasons why their motion to suppress should be denied. It is clear that neither had an interest in the premises where the garbage bag was located, nor were they on the premises at the time of the contested search. Although neither defendant testified at the hearing, the Government concedes that they had an interest in the clothing seized. The United States Attorney argues that the place where the articles were left was not one where they would have a reasonable expectation of privacy. The evidence warrants the adoption



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of this argument. The bag was in an area which was accessible to other tenants, the landlord, repair and maintenance men and many other individuals who used this area and had the right to be there in a regular fashion. Therefore, the area was not within the "curtilage" of defendants' residence and there could be no reasonable expectation of privacy. United States v. Miguel, 340 F.2d 812, 814 (2d Cir.), cert. denied, 382 U.S. 859 (1965). Further, under all the circumstances, it appears that the articles were abandoned.

The admission made by defendant Williams was not in violation of his Miranda rights. He had been advised of these rights on two occasions. He indicated understanding, but said that he had nothing to talk about. The statement made to Agent DiLaura was made voluntarily without any coercion. Further discussion with the defendant may be had after he has indicated a desire to remain silent. United States v. Collins, 462 F.2d 792 (2d Cir.), cert. denied, 409 U.S. 938 (1972). See also, Michigan v. Mosley, 44 U.S.L.W. 4015

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(U.S. Dec. 9, 1975).

The motion of the defendant Smith to suppress the statements given by her is also denied. The fact that Agent DiLaura falsely told her that her companions had implicated her by giving statements does not alter the voluntary nature of her confession. Before Ms. Smith submitted any statements, she signed a statement indicating that she understood her rights and was willing to make a statement. It was only after she had already related one version of the crime that Agent DiLaura made the misrepresentation. The misrepresentation, therefore, had no effect on the voluntariness of her statement. Frazier v. Cupp, 394 U.S. 731, 739 (1968); United States v. Brandon, 467 F.2d 1008, 1010 (9th Cir. 1972); and Moore v. Hopper, 389 F.Supp. 931, 935 (M.D. Ga. 1974).

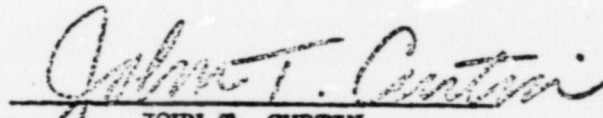


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The jury selection and trial of this case is  
set for Wednesday, January 21, 1976 at 9:30 a.m. Fur-  
ther motions shall be promptly filed and will be heard  
by the court on January 22.

So ordered.

  
JOHN T. CURTIN  
United States District Judge

DATED: January 14, 1976

AFFIDAVIT OF SERVICE BY MAIL

State of New York )  
County of Genesee ) ss.:  
City of Batavia )

RE: United States  
vs  
Edward Carlton

I, Leslie R. Johnson being  
duly sworn, say: I am over eighteen years of age  
and an employee of the Batavia Times Publishing  
Company, Batavia, New York.

On the 22nd day of June, 19 76  
I mailed        copies of a printed Brief & in Appendix  
the above case, in a sealed, postpaid wrapper, to:

10 copies to: Mr. A. Daniel Fusaro, Clerk  
U.S. Court of Appeals Second Circuit  
U.S. Court House  
Foley Square  
New York, New York 10007

2 copies to: Herbert L. Greenman, Esq.  
510 Brisbane Building  
Buffalo, New York 14203

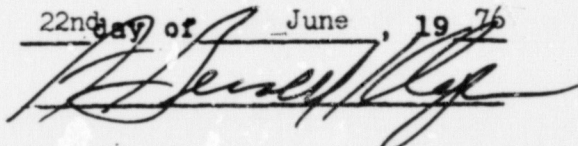
at the First Class Post Office in Batavia, New  
York. The package was mailed Special Delivery at  
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, U.S. Attorney Att: Edward J. Wagner, Asst. U.S. Attorney

United States Court House, Buffalo, New York 14202

Sworn to before me this

22nd day of June, 19 76



A. GERALD KLEPS

NOTARY PUBLIC, State of N.Y., Genesee County  
My Comm. Expires March 30, 1977